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Legal politics of criminal law against the revival of death penalty as an alternative punishment in the new criminal code

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ABSTRACT

The reform of the death penalty into an alternative crime in the new Criminal Code (Law Number 1 of 2023 pertaining to the Criminal Code) is a long-standing agenda that has been launched by the Indonesian Government. This paper aims to analyze how Indonesian criminal law is currently enforced to determine how it will be implemented in the future. This research focuses on the politics of criminal law and basic freedoms regarding the reform of capital punishment into an alternate crime in Law No. 1 of the Republic of Indonesia (KUHP) 2023. The study is based on literature studies and documentation. The results of this study show that, despite the fact that KUHP is primarily intended to protect society, its application should be cautious and targeted at the offender; consequently, it must be selective, and there should be provisions for conditional death sentences or delaying the execution of the penalty.

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INTRODUCTION

The concept of the death penalty, also known as capital punishment, refers to the execution of a person for a criminal offense that is considered serious and detrimental to society. It reflects the view of law and justice of a particular society or country. The death penalty is a form of retribution or punishment equivalent to the crime committed by the perpetrator. The aim is to create balance in society and provide justice to victims or affected communities. One of the arguments in favor of the death penalty is the deterrence effect, namely the belief that the threat of the death penalty can prevent other people from committing similar crimes. However, many studies have questioned the deterrence effectiveness of the death penalty as a way to reduce crime rates. The death penalty is considered a punishment by the principles of justice and provides compensation to the victim or society, so that perpetrators of serious crimes must face consequences commensurate with their actions.

Criticisms of the death penalty include the high risk of legal errors (Archer et al., 1983). There were cases where innocent people were found guilty and executed. Due to the imperfections of the legal system, many support the nullification of capital punishment to keep away from this gamble. The death penalty is opposed by numerous human rights organizations as a violation of human rights, particularly the right to life. They emphasized that everyone is entitled to life and legal protection. Some countries and societies have changed their attitudes towards the death penalty over time. Factors such as developments in humanitarian thinking, changes in societal values, and the desire to avoid the risk of legal errors have encouraged several countries to abolish or reduce the use of the death penalty.

Criminal law reform is the process of changing or updating criminal law with various objectives, including increasing justice, effectiveness, and relevance of criminal law in dealing with changes in society and the social environment. Reforming criminal law could involve reviewing existing crime types and the sanctions provided. It could include adjusting the seriousness of a crime or increasing or decreasing the sanctions imposed. Criminal law reform often emphasizes the protection of human rights. It could include limiting the use of extreme punishment such as the death penalty and other aspects that may violate individual rights. Criminal law reform often involves collaboration between governments, legal experts, human rights

organizations, and the general public. The process must reflect the values of democracy and justice and consider social changes and cultural dynamics.

Criminal law politics related to death penalty reform includes various aspects involving policies, values, and political decisions related to the death penalty. Death penalty policies are often reflected by the government's political views. Governments with a more conservative political orientation tend to support the death penalty as a harsh form of law enforcement, while more progressive governments prefer to seek more humane alternatives. Foreign policy and international relations influence death penalty policy, countries or international institutions can pressure a country to change or abolish the death penalty as part of human rights standards or as a condition for international cooperation. The politics of the death penalty can also be influenced by legal uncertainty the risk of legal errors, and concerns about the possibility of executing innocent people, it could trigger a renewal of the death penalty.

According to Article 10 of Law Number 1 of 1946 pertaining to the Criminal Code (previously known as the Criminal Code), the administration of the death penalty in Indonesia is a fundamental offense. Aside from the Crook Code, capital punishment is likewise directed in different regulations and guidelines, including regulations with respect to criminal demonstrations of defilement, opiates, psychological oppression, and serious basic liberties infringement. In its turn of events, the Indonesian government provided a criminal regulation political strategy by changing the Crook Code with the establishment of Regulation Number 1 of 2023 concerning the Lawbreaker Code (New Lawbreaker Code). In this new Crook Code, there is an adjustment of capital punishment, which is as of now not a fundamental wrongdoing however turns into an extraordinary wrongdoing that is consistently deserving of elective means.

The research explores the problem of how the Legislative issues of Criminal Regulation and Basic freedoms Point of View the Restoration of Capital punishment as an Elective Discipline in Regulation Number 1 of 2023 concerning the Lawbreaker Code. The reasons above are of interest to researchers conducting a study titled "Legal Politics Against Reforming the Death Penalty to an Alternative Crime in the New Criminal Code," focusing on how the reform of the death penalty into an alternative crime affects the politics of criminal law under Law No. 1 of 2023 and the perspective on civil liberties regarding this change.

METHOD

The research uses a normative juridical approach, namely understanding law as a set of regulations or positive norms in the legal system, with the type of data used being secondary data (Soekanto & Mahmudhi, 2003). Doctrinal methods were also used in this research by collecting data using literature studies and documentation. Data analysis consists of the stages of collection, data reduction, verification, and data display.

RESULTS AND DISCUSSION

The Politics of Criminal Law on Reforming the Death Penalty to Become an Alternative Crime in Law Number 1 of 2023 concerning the Criminal Code

Capital punishment is one of the most established types of discipline so it can likewise be said that capital punishment is as of now not by the requests of the times, yet up to this point no other option has been found to supplant it. According to the history of punishment, the death penalty was established with the legal force of "retailism" like a wolf's prey with the birth of humans on this planet. Around then, criminal regulation was applied in light of the hypothesis of outright revenge. The historical backdrop of capital punishment has existed since old times, yet up to this point nobody realizes who was the primary individual to be condemned to death. The primary declaration against the execution of capital punishment is viewed as in "De Idolatria". The Code of Law, which was written during the reign of the King of Babylon and codified the death penalty for 25 different crimes, was the first document to implement the death penalty. Capital punishment was likewise important for the fourteenth century BC, where the Draconian code of seventh century Athens made demise the main discipline for all violations. Capital punishment was completed in different ways like execution, suffocating, pounding into the ground, and consuming alive. In the nineteenth hundred years, numerous nations decreased the quantity of violations deserving of capital punishment. In 1834, Pennsylvania turned into the primary state to move respondents to be executed to a prison. Then, at that point, in 1846, Michigan turned into the primary state to annul capital punishment for all wrongdoings with the exception of treachery and a few states stuck to this same pattern (Teguh & Purba, 2021).

In Indonesia, death penalty regulations have existed for a long time, namely since the implementation of customary law. The applicable customary criminal law requires that punishment for someone guilty is an education for the guilty person so that he repents and returns to the right path. Therefore, no matter how big a person's mistake, if society is willing to accept it, and the guilty person is willing to return to the right path, then that mistake can be forgiven. On the other hand, even though a person's mistake may not be serious, if the character of the perpetrator is difficult to correct, then if necessary, the perpetrator will be removed, banished from customs, expelled from relatives and hometown forever, or even killed (Hadikusuma, 1989).

Article 10 of the Criminal Code (KUHP), which deals with the main punishments of (1) the death penalty, (2) imprisonment, (3) detention, (4) fines, and (5) confinement, provides a solid legal foundation for the existence of the death penalty in Indonesia. Criminal demonstrations deserving of capital punishment as indicated by the Lawbreaker Code can be found in the following articles: Article 104; Article 111 paragraph (2); Article 124 paragraph (3); Article 140 paragraph (3), which are related to crimes against state security; Article 340 (premeditated murder); Article 365 paragraph (4) (robbery with violence); Article 444; Article 479 paragraph (2); and Article 479o paragraph (2), which are related to aircraft hijacking. Criminal offenses outside the Criminal Code that are punishable by the death penalty are spread across the following laws: Regulation Number 12 Drt 1951 concerning guns, ammo, and explosives; Regulation Number 5 of 1997 concerning psychotropic substances; Regulation Number 35 of 2009 concerning opiates; Regulation Number 31 of 1999 related to Regulation Number 20 of 2001 concerning the destruction of defilement; and Regulation Number 26 of 2000 concerning the Common liberties Court.

The controversy surrounding the regulation of the death penalty in Indonesia has been ongoing for a long time. Under various governmental regimes, the death penalty has remained part of the national criminal justice system. There are opinions that the deterrent or preventive effect analysis against criminals threatened with the death penalty has not been very significant. Although Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) in 2005 with Law Number 12 of 2005, the existence of the death penalty in Indonesia persists (MD, 2010).

The new Criminal Code (Law Number 1 of 2023 pertaining to the Criminal Code) in Indonesia contains the goals and guidelines for punishment that have been developed as part of the development of criminal and sentencing reform. He planned the targets and rules for discipline, in light of the reason that the criminal regulation framework is a brought together framework with a reason (purposive framework), and discipline is just a device/means to accomplish the objective. In the mean time, criminal targets are a basic part (sub-arrangement) of the whole criminal framework (criminal regulation framework) notwithstanding other sub-frameworks, to be specific the lawbreaker act, criminal obligation (responsibility), and criminal sub-frameworks. The criminal justice system is a series of processes that go through the formulation stage (legislative policy), the application stage (judicial/judicative policy), and the execution stage (administrative/executive policy) when viewed from a functional or operational point of view. As a result, it is necessary to establish goals and guidelines for punishment in order for the three stages of the criminal justice system to function together as a single system. In this instance, the formulation of the goals and guidelines for punishment is intended to serve as a controlling, directing, and controlling function in addition to providing a philosophical foundation, rationality, motivation, and justification for punishment (Widayati, 2017).

After the proclamation of Regulation Number 1 of 2023 concerning the Crook Code (New Lawbreaker Code), it will become effective in 2026 supplanting Wetboek van Strafrecht (WvS) which was acquired by the Dutch frontier government. The new Crook Code is viewed as an achievement in Indonesian criminal regulation governmental issues, particularly with respect to the guideline of capital punishment. Article 100 of the new Lawbreaker Code currently forces capital punishment with a trial time of 10 years. In the event that during this period the death row convict is considered to have done honorable perspectives and activities, then, at that point, capital punishment forced can be changed to life detainment in light of an Official Pronouncement subsequent to hearing the contemplations of the High Court. This change certainly reformulates the retributive-oriented punishment paradigm in a more rehabilitative direction (Prasetyo, 2023).

The provisions of Article 64 of Law Number 1 of 2023 concerning the Criminal Code explain that crime consists of principal crime, additional penalties, and punishment is specific for certain criminal acts specified in law. In Article 67 of the New Lawbreaker Code, it is expressed that the exceptional discipline as planned in Article 64 letter c is capital punishment which is generally punishable by alternative means. In the explanation, the provisions regarding crimes that can be punished with special crimes are serious or extraordinary criminal acts, including, among others, narcotics crimes, terrorism crimes, corruption crimes, and serious crimes against human rights. For this reason, the death penalty is included in a separate section to show that this punishment type is truly special. When compared with other punishment types, The most severe punishment is the death penalty. In this way, it should continuously be on the other hand compromised with one more sort of discipline, to be specific life detainment or a greatest detainment of 20 (twenty) years.

Capital punishment, which is not recorded in the primary sorts of discipline, is a political move toward the public authority's criminal regulation as far as changing criminal regulation. A separate article discusses the death penalty to demonstrate that it is truly unique as a last resort to safeguard society.

Understanding the politics of criminal law, in the book Politics of Criminal Law by Edi Ribut Harwanti writes, among other things: According to Marcx Ancel, Penal Policy is both a science and an art which ultimately has a practical aim to enable positive legal regulations to be formulated better and to provide guidance not only to the legislators but also to the courts that apply the laws and also to the organizers or implementers of court decisions. According to A. Mulder, *Strafrechtspolitiek* is a policy line to figure out how

much the relevant criminal provisions need to be updated or changed. How can be forestalled criminal acts from occurring? How investigation, prosecution, trial, and criminal execution must be carried out (Harwanto, 2019).

The aim of the politics of criminal law is to analyze how Indonesian criminal law is currently enforced to determine how it will be implemented in the future. As per Moeljatno, criminal regulation is important for the general regulation that applies in a country which gives the essential standards and rules for (Raharjo, 2002):

1) Figuring out which activities may not be completed, which are denied, joined by dangers or authorizations as specific punishments for the people who have disregarded the preclusion;
2) Determine when and in what circumstances those who have broken these rules can face criminal penalties or be threatened with them;
3) If someone is suspected of violating the prohibition, determine the means by which the offense can be punished.

Sudarto (1986) explained that criminal law politics is part of criminal politics, which is divided into three parts, namely:

1) From a thin perspective, criminal legislative issues is depicted as the entirety of standards and techniques that structure the premise of responses to infringement of criminal regulation;
2) The entire operation of the law enforcement apparatus, including the operation of the courts and the police, is broadly referred to as criminal politics.
3) In the broadest sense, criminal legislative issues is an entire strategy, brought out through regulation and official bodies, which plans to implement the focal standards of society.

According to Hiarej (2016), the maintenance of the death penalty in Indonesia is based on three reasons. First, in essence, the threat of the death penalty is still needed. Second, the threat is limited to certain crimes in the extraordinary category. Third, specialization in the form of a probationary period of 10 years is an opportunity for convicts to show improvement (Hiarej, 2016). According to Sahetapy, 10 years is a long duration so observations of the convict's behavior can be objective because the convict cannot act hypocritically or pretend to behave well during that long duration (Sahetapy, 2009). The maintenance of the death penalty in the new Criminal Code is an application of protecting the interests of society, while the 10-year probation period is an application of protecting the interests of individuals sentenced to death (Arief, 2003).

The death penalty is one of the crucial issues in the formation of the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHP 2023). The regulations in the 2023 Criminal Code can be seen from 2 (two) aspects. First, the formulation of criminal acts that contain the threat of the death penalty is still found alternatively as a last resort, for example, in the crime of treason, the crime of premeditated murder, serious crimes against human rights (HAM), and narcotics crimes. Second, the death penalty is still being formulated and threatened as one of the types of punishment that will still be used, is special in nature, and is threatened alternatively. The death penalty still needs to be further regulated in law, which of course requires meaningful community participation. The death penalty is still maintained considering that the main idea of the 2023 Criminal Code focuses on protecting the interests of society, even though in essence it is not the main means of regulating, ordering, and improving society (Rizal & Rachmatulloh, 2023).

Human Rights Views on Reforming the Death Penalty to Become an Alternative Crime in Law Number 1 of 2023 concerning the Criminal Code

The death penalty is a form of basic punishment in the Indonesian Criminal Code (KUHP) because its implementation does not violate the principle of legality of punishment. From a human rights (HAM) perspective, the imposition of the death penalty does not violate the right to life, as long as the death penalty is imposed by a fair trial, apart from that the execution must not be prolonged because it will violate the rights of other convicts. Indonesia will still carry out the criminal law's political ideals of the death penalty. It very well may be seen from the numerous regulations and guidelines that control the inconvenience of capital punishment for offenses. The death penalty is now included in the new Criminal Code is still used as a form of punishment.

Reforming criminal law through modernization and recodification of criminal law is a long-standing agenda that has been launched by the Indonesian Government. Maintaining the death penalty with moderation in the ius constituendum is the legal political choice of the Indonesian nation. According to Soehino, legal politics is the process of forming ius constituendum law from ius constitutum in order to face changes in social life (Soehino, 2010).

The constitutionality of the death penalty has been tested by the Constitutional Court. According to the Constitutional Court, the death penalty is deemed constitutional. However, the constitutional ruling does not mean the controversy surrounding it has disappeared. This debate resurfaces particularly during moments of death penalty verdicts, executions, or clemency requests by death row inmates.

The idea that the death penalty should only be used as a last resort when other measures fail is the driving force behind the death penalty's transformation from a preceding punishment system to an exceptional punishment. The use of the death penalty is compared to amputation in medical practice, which is reserved for situations in which all other treatments have failed. The new Criminal Code (KUHP) states that, despite the fact that the death penalty is primarily intended to protect society, its application should be cautious and targeted at the offender; consequently, it must be selective, and there should be provisions for conditional death sentences or delaying the execution of the death penalty.

The uniqueness of Indonesian law compared to other countries is that every legal product is formulated with a legal political direction based on Pancasila, which is the source of all sources of law. This uniqueness, according to Barda Nawawi Arief, influences the perspectives of both pro and contra-groups regarding the death penalty as the substance of the new Criminal Code. Each group uses Pancasila as a rationale to support their viewpoints (Arief, 2003).

The connection between capital punishment and common liberties is extremely close, this depends on the explanation that the burden of capital punishment is firmly connected with the most essential basic freedoms. With regards to the burden of capital punishment on culprits of wrongdoings carried out in specific situations, it should be concentrated on top to bottom, taking into account that the burden of capital punishment is the heaviest discipline as in the culprit will lose his life, which is a significant right. The right to life, which is likewise remembered for common liberties, is an ethical rule in light of the conviction that a person has the privilege to live and ought not be killed by another individual. The legitimate reason for ensuring the right to life is additionally expressed in Article 9 of Regulation Number 39 of 1999 concerning Basic freedoms, which makes sense of that each individual has the option to life, keep up with life, and work on their way of life.

Capital punishment is firmly connected with basic freedoms capital punishment is totally in opposition to common liberties (HAM) since everybody has the option to live. The assurance for this is expressed in Article 28A passage (1) of the 1945 Constitution which makes sense of that each individual has the option to live and the option to shield their life and presence.

The Death Penalty Moderation Policy in the new Criminal Code will be analyzed from the values contained in the First Principle, Belief in One Almighty God. Belief in God Almighty makes our nation a nation that pursues virtue and kindness, therefore the element of belief in God Almighty is the most important element that animates and includes other precepts.

The death penalty law is very contrary to human rights because it concerns a person's life. Even though it is regulated in law, its implementation still causes controversy and pros and cons in its implementation. Therefore, strict caution is required in its implementation by paying attention to the principles of justice and Human Rights (HAM) regulated in the Law. However, the absolute nature of human rights can cause problems if all laws cannot be implemented because of human rights. We need to know that the limits of human rights are other human rights. Therefore, if a person's human rights are understood and said to be absolute then they can be limited, but these restrictions cannot be interpreted as taking away someone's life.

CONCLUSION

Law Number 1 of 2023 aims to reform the Criminal Code by making the death penalty an alternative crime. Despite not being included in the main types of crimes, the death penalty remains necessary as an alternative and last resort. Capital punishment is connected to common freedoms, as it burdens essential basic liberties. The right to life remains unaffected, as long as it is justified through a fair trial.

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