

Perspective on the Death Penalty in Law Number 1 of 2023 Concerning the Criminal Law Book

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Abstract

Regulations on the death penalty have not escaped being part of the changes made by the government. Changes to the old Criminal Code, into a new criminal code, the issue of the death penalty itself is an issue that is never resolved between parties who agree with it and parties who do not agree, this research wants to show the perspective of the death penalty from point of view of the new criminal law code Number 1 of 2023. This research uses normative juridical research, through a conceptual approach and a historical approach. The results of this research show that the new criminal law code uses alternative criminal sentences in carrying out the death penalty, apart from that, to carry out the death penalty plus a probationary period of 10 (ten) years as a middle ground between parties who agree to the death penalty and those who do not agree to the death penalty.

Keywords: *New Criminal Code, Punishment, Criminal, Death.*

Introduction

The death penalty is one of the oldest forms of punishment in human history which is spread almost throughout the world. One of the oldest examples of death penalty regulations was contained in the Code of Hammurabi by King Hammurabi in the 18th century BC during the old Babylonian era in the 18th century BC. In the middle Ages, the death penalty remained an integral part of the legal system in Europe. Horrifying execution methods, such as burning at the stake and hanging, were often used as punishment for various crimes. However, in the 18th century, new thinking emerged during the Enlightenment that criticized the brutality of the death penalty. Figures such as Cesare Beccaria denounced this practice in his work "On Crimes and Punishments," providing impetus for the movement toward criminal punishment reform.

In the 20th century, there was a global shift towards abolishing the death penalty. Various countries have begun to abolish or limit the use of the death penalty, with some achieving complete abolition. International organizations, such as the UN, also play a role in voicing human rights and condemning the death penalty. Although there are still some countries that use the death penalty today, there is a strong global trend towards eliminating this practice, supported by increasingly deepening principles of human rights and justice.

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Over time, opposition to the death penalty has grown stronger, and the international community has increasingly recognized the need to respect human rights. In 1948, the UN Universal Declaration of Human Rights affirmed every individual's right to life and condemned the death penalty. Legal instruments such as the Second Optional Protocol to the ICCPR in 1989 also confirmed the global commitment to abolish the death penalty.

In Indonesia, the death penalty was initially imposed during the Dutch East Indies government by Governor Daendels to eliminate resistance from the native population. The Netherlands, through *Wetboek van Strafrecht (WvS)*, has implemented criminal law rules in its colonial countries and these rules are also applied in Indonesia. The death penalty was often implemented en masse, especially during the period when the Dutch faced local resistance and efforts to establish an independent Indonesian state. During this time, the death penalty was applied not only as punishment for individual crimes but also as an attempt to suppress and intimidate popular resistance. Commonly used execution methods include bullet shooting, hanging, and beheading.

One of the famous historical events was the Ascetic Rebellion in Central Java in 1825. This rebellion involved Indonesian national heroes, such as Diponegoro, who led the resistance against Dutch colonialism. After being suppressed by the Dutch, Diponegoro was arrested and exiled, marking the beginning of the systematic use of the death penalty in an effort to crush local resistance. As time went by, the implementation of the death penalty by the Dutch colonial government became increasingly controversial and drew criticism from various parties both at home and abroad.

Referring to Article I of the Transitional Regulations of the 1945 Constitution of the Republic of Indonesia, it is explained that the application of regulations that existed before Indonesia became independent will still apply as long as there are no new regulations that revoke these regulations. Thus, the death penalty in *Wetboek van Strafrecht (WvS)* still applies. Thus, the historically in positive law in the Dutch East Indies, the death penalty came into effect on January 1, 1918. It was then confirmed after Indonesian independence through the existence of the Criminal Code (KUHP) as regulated in Article 10 letter a number (1) of the Criminal Code in conjunction with Article 11 of the Criminal Code.

On December 6, 2023 ratified Law Number 1 of 2020 concerning the Criminal Code. In the Explanation of Law Number 1 of 2023 concerning the Criminal Code, it is stated that the drafting of this Law is intended to replace *Wetboek van Strafrecht (WvS)* or what is known as the Criminal Code as stipulated in Law Number 1 1946 concerning Criminal Law Regulations which have been amended several times. This regulation is an important revision of the Criminal Code that previously existed in Indonesia. This law regulates various aspects of criminal law, starting from the definition of crime, punishment, and legal procedures in handling criminal cases, including discussing the death penalty. So what is the perspective of the death penalty in Law Number 1 of 2020 concerning the Criminal Code? The purpose of writing this paper is to understand the provisions and problems of the death penalty in these regulations. The method used is normative juridical, through a statutory approach.

Research methodology

The research approach used by the author in conducting this research is normative juridical. This normative juridical approach is research carried out by collecting research data through document study or literature study which is used to solve research problems.

Results and Discussion

1. The death penalty was created as an alternative crime in the new Criminal Code

The death penalty is imposed for certain crimes that are considered very serious and detrimental to society. Some crimes that can be punished with death include murder with a specific purpose, terrorism, narcotics, and several other extraordinary crimes that are considered detrimental to the security and welfare of society. The old Criminal Code regulated the criteria and procedures for carrying out the death penalty, including the appeal stages and other legal remedies. However, the implementation of the death penalty in Indonesia has generated controversy and criticism from various parties, both within and outside the country

The death penalty is the most serious type of basic punishment, according to the old Criminal Code (Wetboek Van Strafrecht) as contained in Article 10. Unlike the new Criminal Code, the death penalty has been removed from the main punishment and changed to an alternative punishment as a last resort to prevent the commission of criminal acts and protect the community. As stated in the explanation of the death penalty, it is not contained in the main criminal stelsel, the death penalty is specified in a separate article to show that this type of punishment is truly special as a last resort. The death penalty is the most serious punishment and must always be punished alternatively with life imprisonment or a maximum imprisonment of 20 (twenty) years. The death penalty is imposed with a probation period. Thus, within the probation period the convict is expected to be able to improve himself and the death penalty does not need to be carried out and can be replaced with life imprisonment.

In the old Criminal Code, there were regulations regarding criminal acts that were punishable by the death penalty, namely as regulated in Article 104 and Article 140 paragraph (3) regarding treason, Article 111 paragraph (2) and 124 paragraph (2) regarding war crimes, Article 340 regarding murder planning (moord), Article 365 paragraph (4) regarding theft accompanied by loss of life and Article 444 maritime piracy which results in death.

Similar to the old Criminal Code (Wetboek Van Strafrecht), in the new Criminal Code the death penalty still exists and is stated in various articles following the sense of justice that lives in society. Criminal acts that are punishable by the death penalty in the new Criminal Code include Article 191 and Article 192 concerning treason, Article 212 concerning sabotage and criminal acts during war, Article 459 concerning premeditated murder, Article 479 concerning theft which results in serious injury and death of people, Article 588 concerning acts that endanger aviation safety, Article 598 concerning genocide, Article 599 concerning serious crimes against human rights and Article 600 concerning terrorism and Article 610 paragraph (2) concerning narcotics.

2. The Differences in the application of the death penalty between the new Criminal Code and the old Criminal Code

Apart from differences in criminal offenses that are punishable by the death penalty, there are differences in the implementation of executions in the old Criminal Code (Wetboek Van Strafrecht) and the new Criminal Code. In Article 11 of the old Criminal Code, the death penalty was carried out by the executioner at the hanging place by tying a rope tied to the gallows around the neck of the convict and then dropping the board on which the convict was standing. Because these provisions were deemed no longer relevant, the execution of death row convicts in the old Criminal Code was changed to the provisions of Law Number 02/PNPS/1964 concerning Procedures for the Implementation of the Death Penalty in the General and Military Courts. The execution of convicts on death row is carried out by being shot to death by a firing squad.

In the new Criminal Code, death penalty executions can be carried out after the President's request for clemency for the convict is rejected. The new Criminal Code clearly states that the death penalty is not carried out in public. The death penalty is carried out by shooting the convict to death by firing squad or by other means specified in the law. In his explanation, the implementation of the death penalty by shooting the

convict is based on the consideration that up to now this method is considered the most humane. If in the future there is another method that is more humane than shooting the convict, the implementation of the death penalty regulations opens up space for adaptation to these developments.

Apart from the death penalty offense articles and the death penalty execution mechanism, a significant reform has changed in the new Criminal Code, namely that the death penalty, which was originally the main crime, has become an alternative crime. The execution of the death penalty can only be carried out by postponing the execution of the death penalty for 10 (ten) years. The postponement of the execution of the death penalty has been stipulated in writing in Article 100 of the new Criminal Code. In imposing the death penalty with a probation period of 10 (ten) years, the judge needs to pay attention to at least 2 (two) conditions, namely, the defendant's feeling of remorse and the hope of improving himself or the defendant's role in the crime. Furthermore, Article 100 paragraph (4) of the New Criminal Code states that if the convict has good behavior, then by presidential decision based on the consideration of the Supreme Court, the death penalty can be changed to life imprisonment. If the convict during the probation period does not show commendable attitudes and actions and there is no hope of improvement, the death penalty can be carried out by order of the Attorney General.

Different from the old Criminal Code (Wetboek Van Strafrecht), the implementation of the death penalty for women in the new Criminal Code has special provisions. The execution of the death penalty against pregnant women, women who are breastfeeding their babies, or mentally ill people is postponed until the woman gives birth, the woman is no longer breastfeeding her baby, or the mentally ill person recovers. The execution of the death penalty against a pregnant woman must be postponed until she gives birth and until the baby no longer consumes breast milk. This is intended so that the implementation of the death penalty does not result in the killing of 2 (two) creatures and guarantees the human rights of newborn babies. As for the old Criminal Code (Wetboek Van Strafrecht) there were no special regulations regarding the execution of death row for female convicts.

Conclusion

With the renewal of the regulations in Law Number 1 of 2003 concerning the Criminal Code, there are updates to criminal law in Indonesia, especially regarding the death penalty regulations, namely the death penalty as an alternative punishment, the postponement of the execution of the death penalty, the differences in the articles of offenses that are threatened with the death penalty and the execution of female death row convicts. With the new regulations regarding the death penalty in Indonesia, it is hoped that this can be a middle ground between views of the pros and cons of the death penalty.

Suggestion

1. There needs to be comprehensive outreach by law enforcers for the implementation of Law number 1 of 2023 concerning the Criminal Code so that its implementation can provide legal certainty for the community.
2. The death penalty still needs to be further regulated in law as mandated by Article 102 of Law Number 1 of 2020 concerning the Criminal Code which of course requires meaningful community participation.
3. In its implementation, the death penalty sanction must take into account the principle of subsidiarity by paying attention to the precautionary principle due to the nature of the death penalty as a non-evaluative criminal sanction.

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