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The Criminal Imposition Revolution in the Death Penalty in Indonesia

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Abstract

The pro and con conflicts related to the implementation of capital punishment in Indonesia are still a quite complicated debate both in terms of the old Criminal Code and the National Criminal Code. Death penalty is considered as a deprivation of human rights to maintain life. This is considered as a rejection of the provisions of article 28 of the 1945 Constitution which explains all human rights in it. For those who oppose the death penalty, the state is considered to have violated Article 28 of the 1945 Constitution even though it is an order of office which is in accordance with other legal regulations. In the old Criminal Code, death penalty is included in the main punishment, while in the National Criminal Code, death penalty is included in special punishment. In its development from the Old Criminal Code and the National Criminal Code, the paradigm of the death penalty remains in the concept that punishment is an alternative way, even with the death penalty which, as much as possible, if there is a way out other than capital punishment, then that's good. The formulation of capital punishment is not merely punishing someone by eliminating the right to life. Implementation of capital punishment is also carried out as a last alternative so that in the National Criminal Code the formulation of capital punishment is adjusted to the culture, values and norms that live in Indonesian society and the laws that apply in Indonesia.

Keywords: *Death Penalty; The National Penal Code of Indonesia*

Introduction

The death penalty according to the common English dictionary, the death penalty is derived from the words "criminal" and "dead." Criminal comes from the word straf (Netherlands), which could basically be said to be an agony or misery deliberately imposed or imposed on someone who has been found guilty of a crime. [1] The word "dead" has the sense of losing one's life[2]. This criminal form is a

[1] (Nawawi 1984: 25)

criminal executed by robbing a person of his soul in violation of the penal code. It is also the oldest and most controversial of many other forms. Aims were made and executions to make public notice that the government wanted no disruption of the army that the general feared so much. [3]

As one kind of criminal, the death penalty has been known since Roman times, Greece, Germany [4]. The death penalty is the toughest of all criminal threats. A death penalty is a felony punishable by an elimination of lives based on a ruling by a fixed-power court [5]. According to the history of the death penalty is not the new type of criminal in Indonesia. This criminal has been known since the time of kingdoms can be proved by considering criminal types according to the tribal law or the laws of Kings of old, for example:

1) Theft punishable by hand.
2) The death penalty was done by mutilation, striking the head (sroh), beheading and then piercing the head with wood (tanjir), and so forth.

The first WvS ruled that execution of the death penalty was carried out by hanging. Then based on the 1945 staatsblad 1945 number 123 issued by the Dutch government, the death penalty was dropped by being shot dead. This was corroborated by the stipulation of a President number 2 in 1964, a 1964 state sheet no. 38 was subsequently declared to be the 1969 rule number 5 which stipulates that the death penalty be executed by firing off a convict. In this case the state's head prosecutor will attend the execution and the technical execution of the execution by the police firing squad [6].

Act number 2/Pnps/1964/which is 1964 number 2 (LN 1964 number 38) That became the 1969 statute of the death penalty imposed by courts in the neighborhood of public and military justice asserts that:

Article 1: by not reducing the legal conditions of the current criminal proceedings on judicial decisions, execution of the death penalty, which was imposed by a court of public justice or military justice, was done by being shot to death.

The execution of the convict dead must be performed after a court ruling imposed on him by a steady force of law and on the convict has been given the opportunity to petition the President for clemency. The execution may be carried out first through the fiat extie (the affirmative statement to be carried out). The gaming system places the death penalty according to the writer it can be seen from the purpose of the death penalty. The goal of the eventual death penalty is an analysis author based on absolute theory. In the absolute theory, a criminal is an absolute must be handed down against the existence of a crime. Muladi and barda nawawi arief think that "crime is the ultimate consequence that must come asa recompense to the one doing evil. So the basis for the justification of the criminal rests in the existence or the crime itself" [7]. It is just as relayed by Andi hamzah that a criminal is absolutely good for a crime [8].

The theory holds that sentence given to criminals would be a just recompense for the damage it causes, basically inflicting suffering on criminals is justified because criminals have made suffering for others[9]. This absolute theory views idratitude asa recompense for a mistake that has been made, it is

[2] (Poerwodarminto 1983: 95)
[3] Djamali Abdul, *Pengantar Hukum Indonesia* (Jakarta: Rajawali Pers, 2005).
[4] Teguh Prasetyo, *Hukum Pidana* (jakarta: Grasindo, 2012).
[5] Andi Hamzah, *Sistem Pidana Dan Pemidanaan Di Indonesia* (Jakarta: Pradnya Paramita., 1993).
[6] Marpaung, *Asas, Teori, Praktik Hukum Pidana.*
[7] Barda Nawawi Arief, *Kebijakan Kriminal* (Semarang: Universitas Diponogoro, 2007).
[8] Hamzah, *Sistem Pidana Dan Pemidanaan Di Indonesia*.
[9] Prasetyo dan Abdul HalimBarkatullah, *Politik HukumPidana (Kajian Kebijakan Kriminalisasi Dan Dekriminalisasi)* (jakarta: Pustaka Pelajar, 2005).

action-oriented and lies in crime itself. Idleness is administered because the perpetrator must receive the sanction for his error. According to this theory, the basis for punishment must be found for the crime itself, since the crime has caused suffering for others, in return (vergelding) the perpetrator should be given suffering[10].

The sentencing of the perpetrators of this crime is something that is deliberately inflicted because it is believed to have different benefits as well [11]. However, andi hamzah further stated that "there is a crime where it is a crime and there is no need to consider the benefits of its rationing" [12].This opinion seems more firm than previous statements because the ratification of the crime regardless of its potential benefits.

So absolute theory is the correct approach to analyzing the existence of dead criminals in Indonesia. Absolute theory or retribution as one of the touchstones in measuring the application of dead criminals in an idling system that will automatically give preventive measures to communities in order to avoid committing a crime that will be punishable by death. The relevance of absolute theory with the urgency of the death penalty in Indonesia is the attainment of justice, civility and legal certainty in the comprehensive enforcement of criminal law.

Formulation of the Problem

1) How does the penal policy against the penal code of the old penal code (WvS)/?
2) How does the penal policy against the penal code of the Indonesian national penal code?

Research Methods

The research method used in writing the law is the normative-juridical approach. The normatitic juridical approach is the approach made based on the main legal material by studying the theories, concepts, principles of law and the regulations of legislation related to the study. It is also known as the approach to literature, that is, by studying books, regulations of legislation and other documents relating to the study.[13]

Research approaches in normative legal research are very varied, some approaches used: current law legislation (approach approach) and comparative approach (approach approach) are approaches that compare concepts, views and doctrines that develop in legal science.

Discussion

1.Death Penalty Debate as an Ultimatum of Remidium and Primum Remidium

The controversy over the death penalty was not a new challenge in the general public and jurists but has long existed and has, as evidence, been raised by j. e. sahetapy in his thesis entitled "the death penalty in the pancasila state" (published under the same title). Is it just a cheap excuse for a ruling state asan instrument of enforcement to maintain an orderly law against good criminals and large calisthenics of death, Not to mention the list of offenses against persons who cannot be dressed as criminals because

[10] Marpaung, *Asas, Teori, Praktik Hukum Pidana*.
[11] Sahetapy, *Suatu Studi Khusus Mengenai Acaman Pidana Mati Terhadap Pembunuhan Berencana* (Jakarta: Rajawali Pers, 1982).
[12] Hamzah, *Sistem Pidana Dan Pemidanaan Di Indonesia*.
[13] Johnny Ibrahim.*Teori Dan Metodologi Penelitian Hukum Normatif*. (Malang: Banyumedia Publishing, 2006). hlm. 27

they are traditionally called political criminals is one of the reasons he has to question the death penalty in his writing about the death penalty in the pancasila state (read Indonesia)[14].

The introduction of the death penalty was not imposed upon ordinary persons but upon extraordinary crime (extraordinary crime), considered to have demonstrated by his action that he was an extremely dangerous individual for society and therefore must be made harmless by his expulsion from society or life.6 (read condemned). One of the leading advocates for the existence of this country's death institutions is that R. Santoso Poedjosoebroto, who is the former vice chair of the Supreme Court, believes the death penalty to be the ultimate or ultimate weapon in justice, but the execution must be considered on the rights of the convict and his execution in a proper and humane manner[15].

It cannot be denied that there are many experts who disagree with it, but the existence of a dead criminal agency should be valued in its position as part of Indonesia's positive criminal law. In addition to sahetapy, there are still many experts who oppose or oppose the existence of the penal code (but not entirely against the concept of the death penal bill) in Indonesia, one of whom is Sudarto of undip who argued[16] :

> "The loss of life means the loss of man itself. Is there strong enough reason to take a human life itself? Judicial error is always possible, and if this happens during sentencing, there is no other possibility at all to correct. The benefits of this criminal are questionable.

The existence of the death penalty is not only a problem in Indonesia but also a problem in many other countries. It can be seen from the opinion of von henting that blatantly denies the existence of the death penal institutions. He argued that there is a criminalized influence over the death penalty primarily because the state has set a poor example with the death penalty that it is actually the state that is obliged to sustain human life, under any circumstance.

Aside from the loss of the right to one's life, the death penalty also raises another pressing issue and also has a close link with the human rights domain as to when the execution of the execution was carried out. This is because in Indonesia there are no time limits for the execution of a convict. This is what has resulted in a "criminal enterprise." Normative, this criminal work will never be found a legal basis and recognition of its existence, but in practice it will often be used. Then it might be said that the prolonged stay of execution resulted in a "criminal kumulation" prison and a death sentence against the convict.

It is generally based on the conventional premise that it is necessary to eliminate those who are deemed a danger to the public or the state and feel that it is irreversible. Whereas those who are against the death penalty commonly make the grounds of the death contravened to human rights and an incorrigible form of crime if after the execution the result was an error of the sentence pronounced by the judge.

Jonkers Favor capital punishment with the opinion that "criminal reasons cannot be reversed when executed" are not acceptable reasons for stating "the death penalty is unacceptable. For in the courts the verdict of the judge is usually based on right reasons." Furthermore, lambroso and garofalo argue that

[14] Sahetapy, *Pidana Mati Dalam Negara Pancasila* (Bandung: Citra Aditya Bakti, 2007).
[15] Alwan Hadiyanto, "Pro Dan Kontra Pidana Mati Di Indonesia," *Jurnal Dimensi* 5, no. 2 (2016): 1–20, https://doi.org/10.33373/dms.v5i2.3.
[16] Djoko Prakoso and Nurwachid, *Studi Tentang Pendapat-Pendapat Mengenai Efektivitas Pidana Mati Di Indonesia Dewasa Ini* (Jakarta: ghalia indonesia, 1984).

the death penalty is an absolute tool that must exist in society to eliminate irrepressible individuals. Those individuals are certainly individuals who commit extremely serious crimes (extraordinary crime)[17].

One expert on criminal law and the national penal reform figure in Indonesia Prof. Barda Nawawi Arief, SH from UNDIP explicitly in his book states that capital punishment still needs to be maintained in the context of the national criminal code renewal. This can be illustrated by the writer's opinion expressing[18] :

> "While capital punishment is maintained primarily asa community protection effort (so to be more emphasis or emphasis on community interest), it is expected to be selective, careful and oriented on individual (criminal perpetrators) protection.

2. The Death Penalty in the Old Penal Code (WvS)

Roeslan was wrong in a Indonesia criminal stelsel (1987) explained that the death penalty was the toughest type of criminal by Indonesia's positive laws. For those who are pro, the death penalty is considered a deterrent because the quality and quantity of crime over time is increasing [19].The history of the rise of arguments for and counter to the death penalty, each msing-is supported by the juridical arguments The heroes of the past who fought against one of the champions were achiller. Lambroso is one of the pros.

In development of the death penalty in Indonesia the old penal code places the death penalty as the principal criminal and carries the highest penalty. The arrangement on the death penalty is set in statute No.02/Pnps/1964 on the manner of executing criminals in a public court and military environment is done by being shot to death. As for the time and place the death penalty was conducted on the basis of the judge. These laws are the latest arrangement on the death penalty in the old penal code. This is because in article 11 of the penal code, the death penalty was committed by the way the hanging felt was irrelevant today.

The death penalty is prescribed in the penal code (criminal law) as the codification of the positive criminal laws derived from the WvS, enforced under the principles of concordance. WvS continued in Indonesia since January 1, 1918 with 1915 number 732. After Indonesia free WvS remained in effect under law number 1 in 1946 and according to this law the book of criminal law obtained the name of a criminal law which was then reestablished for all the territory of the united Republic of Indonesia under statute 73 in 1958[20].

The death penalty is one of the principal crimes set up in article 10 of the criminal code. The penal code of death was enacted in a criminal law based on the Indonesian penal code. In its history, wetboek van strafrecht voor nederland indie was changed to wetboek van strafrecht called a book of criminal law or criminal law. Kuhpis officially implemented nationally by bill no. 1 in 1946 on penal regulations as amended to act no. 73 in 1958 on declaring its act no. 1 in 1946 the republic of Indonesia on penal regulations for the entire region of the republic of Indonesia and altering penal laws. The terms of the penal law have been adopted in its entirety based on the principle of concordance. This, too, automatically refers to the Dutch legal system, the civil law. Civil law system, characterized by a written law (lex sripta, lex certa, and lex stricta). Rules regarding common rules, felonies, and criminal law. The various types are found in criminal law, including the death penalty listed in article 10 of the criminal

[17] Hamzah and Sumangelipu, *Pidana Mati Di Indonesia Di Masa Lalu, Kini Dan Di Masa Depan* (Jakarta: ghalia indonesia, 1985).
[18] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2005).
[19] Nandang Sambaz, "Penerapan Pidana Mati Dalam Hukum Pidana Nasional," no. 1 (1997): 248–57.
[20] (Agustina 2015: 55)

code. The death penalty is one of the principal and heaviest crimes in which the theft of a perpetrator's life after the ruling by a stand-down judge. Based on this the death penalty is a legitimate criminal according to the law and can be applied in the criminal judicial process. According to the penal code The method of executing the death was also recognized as a hanging, but after the 1969 act of capital punishment was passed by the courts in a public justice and military environment the method of execution was executed by the firing of a firing squad on the part of the prosecutor 21.

In this provision, the death penalty was set forth as one of the principal types contained in article 10 of the penal code. Article 10 of the code:

1) Criminal principal
a) Death penalty
b) Prison criminal
c) Criminal cage
d) Criminal fine
e) Criminal cover
2) Criminal added
a) Purges of certain rights
b) Piece of luggage
c) Judgment announcement.

It asserts that capital punishment is the first type of criminal in the principal criminal hierarchy. Aside from the criminal code, there are a lot of extra-criminal death laws, known as special crimes, among them laws on terrorism (law No. 15 in 2003), laws on human rights (Law No. 26 In 2000), laws on psychotropic (Law No. 5 in 1997) and the number 35 in 2009 on narcotics.

The inconstituency of sioanal or no death penalty has actually been answered in a constitutional court ona 1997 constitutional testing request for a drug rights bill of 1945 proposed by four convicted narcotic cases by his legal rights relating to the inconstitutionality of the criminal death contained in the 1997 penal code no. 22. In accordance with the constitutional court's ruling, it is categorically stated that a death threat at the 22nd 1997 penal code does not conflict with the constitution. An analogy might point to the conclusion that the death penalty is not an inconstitutional act. To strengthen the argument above, then why should the writer amplify it by presenting the sound of the concession ruling the constitutional court to the application, under article 80 verse (1) letter a, verse (2) letter (a), verse (3) letter a; Chapter 81 verse (3) letter (a); Article 82 verses (1) letter a, verse 2 (letter) a and verse (3) letter a in narcotics law, as far as death threats are concerned, are not specified by article 28a and article 28i (1) section 1945.

Indonesia's death penalty based on the history of the penal system itself is not consistent with its own concordant principle, in which the book of criminal law enacted in Indonesia should either concordant or overeenstemming or match the wetboek van strafrecht himself. While in 1870 the death penalty was abolished in the Dutch country wetboek strafrecht, yet to this day the death penalty in the Indonesian penal code of law asa result of the concordansion principle on van strafrecht wetboek in the Netherlands, remains to be found in the Dutch penal penal system under article ii of the penal code of 1945.

As for the basis of a death penalty to have a real deterrent to society, it is more a prevention to criminal actions, specifically those with death threats. Unfortunately, the purpose of the implementation of this death penalty is not in spite of some criticism based on research by the team found data that "in drug cases where many perpetrators have been put to death but have not brought down the crime" (2005

[21] Hesti Widyaningrum, "Perbandingan Pengaturan Hukuman Mati Di Indonesia Dan Amerika Serikat," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 1 (2020): 99–115, https://doi.org/10.24090/volksgeist.v3i1.3777.

data reported by an international control board). In addition, other criticism based on international law related to 6 ICCPR, 3 UDHR, and so forth affirming to the international/national community that we should follow the progress of the international community on capital punishment to begin its removal in legislation in Indonesia. Unfortunately, the death penalty still seems to be used by the government to prevent crime in Indonesia, despite the fact that the death penalty is widely debated as to its effectiveness in preventing the crime itself.

In general, a country that is a civil law system in governance on death row has long abolished the provision in its penal law, but in contrast with Indonesia that still imposed the death penalty as imposed in the legislation laws such as criminal law as criminal law and non-criminal law. According to its history this civil law system was originally dispersed especially in the land of Europe but in its development in other continental countries embracing a civil law system, including Indonesia. As long as Indonesia was colonized by the Netherlands, the Dutch law, derived from the verification of French law, became part of the country's civil law system.

Based on this principle of concordances, Dutch penal law was then almost wholly adopted in criminal law in Indonesia. This coding system is a major requirement in a civil law system and is written. As for the cofounder of the European continental legal system derived from Roman law. Let it be known before the twelve chapter law (the twelve table) of Rome USES its customary law. Following the development of this Roman law modified the jussian version of the corpus juris civillis that was affected by church/krisitani's ideas. But after the fall of Rome the use of the corpus juris civillis is growing dim.

3. The Renewed Execution of the Penal Code in Indonesia

Human rights are a set of rights attached to man asa creature of god and this right is a right that cannot be taken away in any form and in any interest. One human right is the right to live and preserve life. Ewith the rising tide of the reformation, the restoration of human rights in the second amendment of the 1945 bill has been firmly arranged as stated in chapter X a chapter 28 A to page 28 J.

Based on the chapter, which states that everyone has the right to live and the right to preserve his life, many argue that the existence of death penalty in Indonesia contradicts chapter 28 itself. Jurisdictionally, it means in human rights that every individual or group of states, including state forces, either intentional or unintentional or lawless, subtracted, impeded restriction and loss of human rights or of persons guaranteed by this law and denied or feared, would not have a just and right legal settlement based on prevailing legal mechanisms[22].

The debate for the death penalty has been a topic for human rights activists since the constitutional court ruled November 20, 2007, which has denied the elimination of death sentences for the perpetrators of criminal narcotics. The dissenting reaction also occurred during President megawati's leadership when she refused a pardon from the condemned. From the description in the chapter that is categorized asa human rights violation, it is either deliberately or unintentionally illegal. Human rights activists, according to the law against execution of the death penalty in Indonesia, would be violating the right to life itself as governed in the 28 1945 constitution. In old criminal law, death is a major threat to criminal offenses 23.

Based on data identified as set up in criminal law and the outside law that the death penalty is not governed exclusively in a crime threatened by the criminal but rather as an alternative. We can see for example that in isa chapter 340 criminal law states that anyone deliberate and premeditated taking others' lives is threatened, for a premeditated murder (moord), with a death or life sentence ora specified time, twenty years at the most. Based on the above chapter we can look at the word in bold letters "or"

[22] Sambaz, "Penerapan Pidana Mati Dalam Hukum Pidana Nasional."
[23] Tim Imparsial, *Menggugat Hukuman Mati Di Indonesia* (Jakarta: Tim Imparsial, 2010).

affirmatically that the death threat was in an alternative system of idomy, meaning that ifa judge was going to pass a death sentence on a death sentence then the death penalty was not the sole threat, but the judge had to choose so that the judge would have to exercise extreme caution. This alternative quality asserts that the threat of capital punishment is ultimum remedium so that capital punishment is used as a last resort to the prevention of crime. From this description, it is seen that while old criminal law, the death penalty falls into the basic criminal category, but in execution, the death penalty remains alternative to execution. It's certainly a form of fighting for human rights to preserve life.

As for the record in Indonesia's development we can particularly see in national penal code section 66 it sets that capital punishment asa speciality and alternative. The death penalty doesn't qualify in the principal criminal but outside the main criminal. This emphasizes that the criminal should be completely selective in its use regarding only serious crimes. The criteria for these serious crimes are set in iccpr and the prevention conventions and convicted crimes of genocide so that our national criminal code has also adjusted to global conditions, despite the fact that the national criminal code still allows capital punishment for the future. This notes that "crimes are still needed as part of the criminal sanction that can be imposed by judges selectively in safeguarding the interests of the general public."

Efforts to reform criminal law through the creation of national criminal code, the orientation of national code approved to national code (act No. 1 in 2023) cannot escape the national ideology or view of life (act No. 1 in 2023), be it national ideology, human condition, nature, and national tradition, or international development that is recognized by civilized society in other words "the pancascidal principle of interest." This means that the pancasila values should permeate the articles of national criminal concepts 24.Formulating a death penalty formulation in future criminal law renewal is not in spite of the ongoing debate among criminal law experts in Indonesia. Each party for and against the death penalty among Indonesian experts has its own reasons or legal basis.

According to the muladi in the criminal law renewal business In Indonesia that should be taken care of Profoundly and seriously, future criminal laws should always be aware of the development of science and technology for their increased functioning in society[25]. He said the rupiah was expected to strengthen to rp9,100 per dollar in the Jakarta interbank spot market on Tuesday. Criminal law policy in the process of legislation is a highly strategic early planning stage of the law enforcement process 26. Hermann mostar, a German writer well described and illustrated the death penalty as judicial murder. A court can become a legal ground where innocent people are killed if they neglect precision and caution in examining a matter which causes error in proving and rendering a verdict.

B. Arief and Sidharta The opinion that the state's accountability of criminal (punishable by death) has at least 3 (three) aspects, namely:

1) The actions of the convict are bad and dignifying and jeopardizing human existence,
2) Criminal penalties should serve as a warning to people away from such vices,
3) Criminal recognition should be directed to encourage the convict to actualize his human values. He therefore feels that the death penalty meets only the first and second aspects of the three that must be met in order to bring the state to account for the crime[27].

The essence of the goals of idylation in the national penal code that have to be first internalized or understood is to use a fundamental multi-dimensional approach to the effects of criminal actions. So the

[24] Robyanugrah and Raja Desril, "Kebijakan Formulasi Perbuatan Melawan Hukum Dalam Pembaharuan Hukum Pidana Indonesia," *Journal Equitable* 6, no. 1 (2021): 43–63, https://doi.org/10.37859/jeq.v6i1.2683.
[25] Muladi, *Proyeksi Hukum Pidana Materiil Di Masa Datang.* (Semarang: Tim Penerbit Universitas Diponegoro, 1994).
[26] Khairawati, "Kebijakan Hukum Pidana Pemberian Grasi Kepada Terpidana Narkoba Dalam Perspektif Pembaharuan Hukum Pidana," *Law Reform* Volume 9, no. Nomor 1 (2014): 115.
[27] Lubis dan Todung, "Kontroversi Hukuman Mati" (Jakarta, 2009).

purpose of idling is to repair the damage of both individual and social (individual and social). Maintaining community solidarity is also included in the purposes of idleness and idleness should be directed to the maintenance and maintenance of society (to maintain social cohesion intact) [28].

The forward arrangement of capital punishment should be either a way or an attempt to harmonize between the death pro groups and the death cons. The arrangement of capital death to the front is categorically reject of ideas or principal balances especially in this case the balance between the interests of the faction that support the death penalty and the interests of the class that reject the death penalty.

Under the idea of balance, article 64 of the national penal code act number 1 of 2023 states at points (c) of criminal speciality for specific crimes specified in the law. Article 67 further states that a specific criminal as in article 64 points (c) is a death sentence constantly threatened alternative. Under article 64 points (c) and 67 is the course the constituent takes to ensure that the death penalty is a special and constantly threatened alternative. This illustrates that in the future provision of capital punishment, the Indonesian people will be able to continue to acknowledge the death of a criminal, but the death penalty must be a special one and should always be threatened alternative so that the court of justice in his judgment on cutting a case will either be given a death penalty or not. Article 98 of the national criminal code states that capital punishment is being threatened alternatively asa last resort to preventing criminal ACTS and safeguarding people.

According to barda nawawi arief, the arrangement of capital punishment on national clavicle is an effort to adjust capital punishment to features of cultural values, the religion of the Indonesian nation by focusing on the idea of balance, so as to place capital punishment as a speciality and a threat to the alternative, and the transfer of capital punishment from the underlying criminal and capital punishment as a last resort. Criminal law positive in renewed national criminal law relating to capital crimes in order to look forward are genuinely concerned about the following:

a) The death penalty is no longer the principal criminal, but it is a speciality and alternative one;
b) The death penalty could be imposed on a trial period of ten years in which if a good - conduct convict could be commuted to life imprisonment or for 20 years;
c) The death penalty could not be meted out to immature children;
d) The death penalty against pregnant women and mental illness is suspended until the pregnant woman gives birth and the sick death convict is cured.

Conclusion

The debate over the death penalty controversy continues today, whether the death penalty contradicts the state of pancasila or not. Indonesia as a nation of laws underlies all activities in accordance with the rule of law. Death row in the country of Indonesia has a strong legal foundation as arranged in article 10 of the penal code on principal criminal. Indonesia's renewal of criminal law through the renewal of the penal code is also not apart from the arrangement how the death penalty should be governed in the concept of the national penal law. In the renewal of criminal law, criminals die in formulation as specialized crimes and are used as a final effort to protect society. His expulsion of the death penalty from a basic criminal type to a special criminal constitutes a valve or a safety valve to prevent arbitrary use of the death penalty by the court so that the capital is actually used as a last resort.

[28] Eko Soponyono, "Kebijakan Perumusan Sistem Pemidanaan Yang Berorientasi Pada Korban," *Masalah-Masalah Hukum* Volume 41, no. Nomor 1 (2012).

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