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Death Penalty in the National Criminal Code Versus Human Rights

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Abstract

Pancasila is the basis of the state in Indonesia. Countries have several types of legal rules enforced according to the crime rate of the offender. Mistakes in responding to state law lead to wrong actions. The purpose of this study is to increase legal awareness of the people in Indonesia through preventive action, namely that criminals are expected not to commit crimes because they have received a deterrent effect from punishment. Research method with normative juridical. Data analysis techniques through analysis of electronic journals, e-books and reference searches through Google Scholar. The results of the study show that the types of punishment in Indonesia have different levels according to the treatment of the crime. The heaviest consequence in serving the Death Penalty. On the basis of errors in acts of corruption and other cases. The death penalty can apply to life imprisonment, shot to death based on the judge's decision.

Keywords

Death Penalty, Criminal Code, Human Rights

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1. INTRODUCTION

The death penalty is a form of punishment given by a legal system to someone who has been sentenced to death for a serious crime and can be subjected to the maximum penalty according to criminal law. The death penalty can be carried out in different ways, depending on the country or legal system in place, such as hanging, shooting, lethal injection, or beheading.

The imposition of the death penalty is highly controversial because it involves issues such as human rights, justice, ethics, and the effectiveness of punishment in preventing crime. Some countries and international organizations have abolished the death penalty as a form of punishment because it is considered to violate human rights and can cause fatal judicial errors. The death penalty can serve as a warning to society not to commit serious crimes and can reduce the crime rate. However, this view is also criticized because it cannot guarantee justice and can lead to abuse of power by law enforcement officials.

Fakultas, and Clarins (2022), of the 50 states in the United States, only 12 do not impose the death penalty, while the remaining 38 states still maintain it (Clarins, 2022). As a sovereign nation and a member of the United Nations, Indonesia has adopted the concept of the right to life as a fundamental human right.

There are several cases and issues related to inhumane execution of the death penalty, such as the use of methods that cause unnecessary pain or suffering, or errors in the judicial process that can lead to the misuse of the death penalty against innocent people. Therefore, the use of the death penalty remains a complex topic of debate in various countries and legal systems.



In the field of criminal law, the colonial government of the Netherlands (Brier & lia dwi jayanti, 2020a) introduced the prison system in Indonesia, which was punitive and repressive. The death penalty is still a contentious issue and is the subject of discussion among legal experts and practitioners in the era of republican reform (Sumanto, 2004).

Recently, Indonesia officially signed Law Number 1 of 2023 concerning the Criminal Code (KUHP) on Monday (2/1). After being promulgated, the KUHP will take effect in 2026, or three years after it is ratified. The latest KUHP has been approved at a plenary session of the House of Representatives (DPR) on December 6th. In point b of Law Number 1, this KUHP will replace the old rules which were a legacy of the Dutch East Indies colonial government.

The ratification of the KUHP is overshadowed by the rejection of several groups against articles that are considered to have the potential for criminalization. The Chairman of the Indonesian Legal Aid Foundation, Muhammad Isnur, considers that there are still articles that have the potential for multiple interpretations, thereby opening up the possibility of criminalizing citizens. Similarly, the Press Council notes that there are at least 17 articles in the new KUHP that have the potential to disrupt press freedom.

The constitution and legal determination of a country become a cultural element based on the embodiment of social values by enhancing the understanding of legal sanctions for violations of social norms, culture, customs, and religion in a guided manner. The weakness of society in understanding legal sanctions is due to a lack of education, insufficient legal socialization, and a lack of understanding of the purpose of sanctions. In accordance with the limitations of society's weaknesses in Indonesia, the role of the government in providing voluntary legal assistance proposals is to increase legal knowledge broadly among the Indonesian people. Legal norms appear in rules related to civil case settlements, which are formulated with terms such as "based on consultation", "agreement of the parties", "in good faith", and others (Rokhim, 2015). Conversely, the character of the law appears harsh and severe, as seen in criminal law norms, such as "capital punishment" and life imprisonment. The view of the people can contribute to the continuity of life towards a just and prosperous peaceful society. (Faculty of Law Lecturer, University of Riau, n.d.) The view of criminal law experts who agree with the death penalty is that harsh threats are still needed to control crime, as with the death penalty. Negative responses to the birth of the KUHP Law also came from the UN representative for Indonesia. In a letter to the DPR and President Jokowi, the UN Representative for Indonesia highlighted articles that have the potential to violate human rights, such as provisions on serious human rights violations and freedom of expression. Responding to various negative assumptions about articles in the KUHP, Minister of Law and Human Rights Yasonna Laoly confirmed that the existence of the new KUHP Law had considered various legal aspects. He called the birth of the KUHP a great breakthrough in the history of Indonesian law. Nevertheless, he allowed those who disagree with the contents of the KUHP Law to submit a material test or judicial review to the Constitutional Court. "Judicial review is a constitutional mechanism. I invite friends to learn to do things constitutionally, legally in their approach," said Yasonna at the Merdeka Palace.

Article 12 (1) of Criminal Acts is an act that is threatened with criminal sanctions and/or actions by regulations. (2) To be declared a Criminal Act, an act that is threatened with criminal sanctions and/or actions by regulations must be against the law or contrary to the law that exists in society. (3) Every Criminal Act is always against the law, unless there is a justifying reason. Article 12 paragraph (1) of the Indonesian Criminal Code states: "Every person who commits an act prohibited by law with a penalty of imprisonment or confinement can be punished with a fine." The purpose of the explanation of this article is that anyone who commits an act prohibited by law with a penalty of imprisonment or confinement can be punished with a fine. In this case, a fine is an alternative punishment provided by the law to replace imprisonment or confinement, especially in cases that are considered light or do not materially harm.

This fine aims to provide a deterrent effect for perpetrators of crime while also providing restitution to the victim or society who suffered losses as a result of the crime. The amount of the fine imposed depends on the circumstances and nature of the violation committed, as well as the financial ability of

the offender. However, it is important to note that monetary penalty is not the only alternative punishment that can be given in criminal cases. Other alternative penalties such as probation and alternative sentencing can also be given according to applicable provisions (Rokhim, 2015).

The execution method used during the French Revolution was called the guillotine, a kind of giant blade used to decapitate the condemned. At the same time, England implemented hanging, which was considered more humane than the previous method of using a catapult chair, which involved throwing the condemned from a height. In the 1800s, the United States also developed more "humane" execution methods such as the electric chair, lethal injection, and gas chamber, which had previously been carried out through hanging, beheading, or stoning the condemned to death. In the People's Republic of China, public firing squads are still used for execution, especially for corrupt officials. Such executions are considered effective in creating a deterrent effect against all criminal acts. One of the main purposes of imposing the death penalty is to provide a strong warning to society to prevent criminal acts that can harm oneself and others. The consequences of a person's criminal act can damage both social and personal morality, break down unity among people, and create social violence. The death penalty is an instrument to protect both society and the state in both preventive and repressive forms (Aeni & Bawono, 2021). The policy of the death penalty in Indonesia is still a subject of dispute between supporters and opponents. Supporters aim to uphold justice and to create a deterrent effect for perpetrators of criminal acts. Opponents argue that the right to life is a human right. Offenders are given the opportunity to receive life imprisonment with the possibility of sentence reduction for good behavior, resulting in a decrease in the total number of death sentences to life imprisonment in prison.

The perspective on the death penalty carried out by states later became a central issue when the death penalty was debated against the right to life as a fundamental principle in the implementation of universal human rights (Clarins, 2022). The right to life is a fundamental right that is *sine qua non*. The value of social law violations becomes a consideration for a nation's progress in public policy aspects and the value of social justice for all Indonesians. Indonesia consists of a pluralistic society, consisting of various ethnic groups, languages, cultures, and religions (Aeni & Bawono, 2021). This pluralistic nation has made a national agreement, which is embodied in Pancasila and the 1945 Constitution, as the fundamental law in community life, nationhood, and statehood. The death penalty has several alternatives to enforce life imprisonment without parole or sentence reduction. This punishment is considered more humane and provides an opportunity for criminals to make improvements and rehabilitation. The connection between death penalty policy and several problems that often arise are: Injustice in the application of the death penalty, because there are cases where innocent people are sentenced to death or there are differences in treatment between the rich and the poor. The possibility of forced confession or identification errors that can cause someone to be sentenced to death without cause. Uncertainty in death penalty decisions, because every justice system has human error and errors in the application of criminal law can lead to wrong decisions. As an alternative to the death penalty, some countries have applied life imprisonment without parole or sentence reduction. This punishment is considered more humane and provides an opportunity for criminals to make improvements and rehabilitation. Criminal law threats in Indonesia.

Abnormal actions by prisoners (NAPI) can be dealt with by imposing imprisonment according to the violation committed. Criminal law threats in Indonesia consist of various actions that can be considered criminal. Some examples of criminal actions that can face criminal law threats in Indonesia include: Theft: The threat of criminal punishment for theft can reach up to 7 years in prison, depending on the value or type of item stolen. Assault: The threat of criminal punishment for assault can reach up to 5 years in prison if it causes minor injuries, and up to 12 years in prison if it causes serious injuries or death.

Narcotics: The threat of criminal punishment related to narcotics can reach the death penalty, life imprisonment, or imprisonment for decades, depending on the type and amount of narcotics found. Corruption: The threat of criminal punishment related to corruption can reach imprisonment for decades or large fines, depending on the value of money or profit received by the perpetrator. Sexual

crimes: The threat of criminal punishment related to sexual crimes, such as rape or sexual harassment, can reach up to 20 years in prison or life imprisonment.

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Sexual crimes: The threat of criminal punishment related to sexual crimes, such as rape or sexual harassment, can reach 20 years of imprisonment or life imprisonment.

According to Hans Kelsen, human actions are considered a crime because there are legal rules that impose a sanction as a consequence of the action to be accountable in court. According to the UUD 1945, Article 28I Paragraph (1), every person has the right to freedom of association, assembly, and expression of opinion. In addition, Article 28I Paragraph (2) of the UUD 1945 also affirms that every person has the right to equality before the law and the state without discrimination. Meanwhile, Law No. 39 of 1999 concerning Human Rights also elaborates on human rights in more detail, including the right to freedom of expression, expression of opinion, assembly, and association peacefully without coercion. Furthermore, the law also recognizes the right to equality and protection from discrimination, the right to freedom of religion and belief, the right to health, education, and the right to protection for children and women. Both laws emphasize the importance of protecting human rights, including the right to freedom of expression and not being discriminated against in any form. Therefore, every person in Indonesia has the right to enjoy these rights without any intervention from unauthorized parties.

Criminal law in Indonesia has established Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection and Law No. 8 of 1981 concerning Criminal Procedure Law as its legal basis. Criminal sanctions are given to protect society from criminal acts and to maintain public order and security in general. Legal provisions have been in effect for the common interest with the rules that have been established as the main elements of the state to improve morality and social justice. Working together to increase awareness and social strength becomes an element in creating a harmonious human civilization. Based on the above issues, several things can be formulated, including: a. How is the concept of understanding the death penalty in Indonesia? b. Is the death penalty still of great urgency and benefit in Indonesia? If it is concluded that it is still necessary to apply it objectively with the requirements stipulated in Law 1/2023?.

2. METHODS

Normative juridical research is a type of legal research that is qualitative in nature and conducted by analyzing legal norms related to the legal problem being studied. Normative juridical research is usually conducted by examining legal documents such as laws, government regulations, presidential decrees, court decisions, and other legal literature.

The design in research with legal literature study is conducted by analyzing legal materials such as books, articles, journals, and papers related to the legal issue being studied using the normative-juridical research method (Arief, 2019). The juridical approach refers to the law and regulations in force, legal theory, and expert opinions. Meanwhile, the normative approach is done by studying secondary literary sources.

3. FINDINGS AND DISCUSSION

Based on the results of the literature review analysis, the definition of law is to impose sanctions on criminals by enforcing state rules in accordance with applicable laws. The term "death penalty" contradicts human values. The death penalty can apply to high-level crimes, including those who commit violations by intentionally taking someone's life, causing accidents or deaths, and committing

acts of corruption. The death penalty is a punishment or sentence imposed by a court as the most severe punishment against someone for their actions (Wijaya & Subroto, 2021). The existence of a law has real functions and purposes, such as providing discourse on the consequences of every action under the law. Criminal law aims to achieve justice, certainty, and usefulness for society and the state, while its function is to maintain order (social control) (Anjari, 2015). For people who are aware of the function of the law, they can prevent violations by understanding the consequences of criminal behavior. This can limit someone from consciously committing a criminal act, thus preventing it.

The perpetrators of crimes who do not consciously understand the function of the law will receive different treatment. The offenses they commit can result in mild, moderate, or severe legal sanctions, depending on the level of the crime. (Faculty of Law, University of Riau, n.d.) Capital punishment is nothing more than legalized murder, as Allah forbids killing. The Hammurabi Code of Babylon in the 18th century BC had 25 types of crimes punishable by death. Later on, the types of crimes punishable by death varied (Rokhim, 2015). For example, in the Greek kingdom in the 7th century BC, capital punishment applied to all crimes. In the following periods, the types of crimes punishable by death became more limited. The method of execution for capital punishment has changed over time. Capital punishment is the harshest form of punishment in the legal system of some countries around the world. There are several types of capital punishment, including hanging, shooting, forced labor until death, and lethal injection.

The new Criminal Code, which will come into effect in three years under Law No. 1 of 2023, is related to the current Criminal Code (which originated from the Dutch Criminal Code). In this new Criminal Code, capital punishment is no longer a primary punishment but an alternative punishment with requirements. The focus of this article is on capital punishment in the National Criminal Code (Law 1/2023) in relation to human rights (as seen from our Constitution and international conventions, jurisprudence, and the opinions of legal experts). The discussion revolves around the issue of whether or not capital punishment should still be imposed in Indonesia under the National Criminal Code (even as an alternative punishment), given that some countries no longer apply capital punishment. The article also discusses how the conditions for avoiding capital punishment (as an alternative punishment regulated in the National Criminal Code) can be objective. The importance of objectivity is highlighted, for example, with the possibility of buying and selling certificates of good behavior. A defendant who is sentenced to death can be pardoned if he or she exhibits good behavior for the first ten years of his or her sentence. If the conditions for good behavior are met, the sentence of death can be commuted to life imprisonment. (Karini, 2023) Moh. Mahfud MD stated that legal politics is legal policy or the direction of the law that will be implemented by the state to achieve its goals, which can take the form of making new laws or replacing old ones.

Death penalty by electrocution: The suspect is sentenced to death by being subjected to a high voltage electric current until death occurs. Death penalty by rocket launch: The suspect is placed in a rocket and launched into outer space. Death penalty by poisonous gas: The suspect is exposed to poisonous gas. Criminal law is a part of the law that determines criminal actions and the sanctions imposed for those actions. Meanwhile, the death penalty is the highest criminal punishment given to someone who has been found guilty of a very serious crime, such as premeditated murder or organized crime that causes massive harm to society. The application of the death penalty is a controversial policy issue in many countries, as this sanction is considered a violation of human rights and inhumane. Some countries, such as the United States and some Asian countries, still impose the death penalty, while others have abolished it from their legal systems. The term "punishment" comes from the word "straf," which is sometimes called "hukuman" in Indonesian (Afif, 2021). The term "pidana" is more accurate than "hukuman," as "hukuman" is commonly used as a translation of "recht." Punishment is a deliberate suffering imposed by the state or an institution on one or more individuals as a result of a criminal law (sanction) for violating criminal law. In the context of the death penalty policy, some issues that often arise are: injustice in the application of the death penalty, as there are cases where innocent people are sentenced to death or there is a difference in treatment for the rich and the poor. Possible forced

confessions or identification errors that can lead to someone being sentenced to death without just cause. Uncertainty in the decision to impose the death penalty, as every justice system has human errors and errors in the application of criminal law can lead to wrongful decisions. Imprisonment is the result of the application of the basic theory of absolute punishment and classical punishment theory, which is still applied in Indonesia (Anjari, 2015). In addition to imprisonment, the Indonesian criminal justice system adheres to the basic theory of relative punishment and modern punishment theory by implementing actions and restoring damaged situations as a result of criminal acts (restorative justice). In December 2022, the United Nations General Assembly adopted Resolution 77/2022 entitled UN Resolution for Global Moratorium on the Death Penalty (Lazuady et al., 2022). This resolution calls on countries around the world to impose a moratorium on the use of the death penalty with the target of ultimately abolishing this type of punishment altogether. In the vote to adopt the resolution, 125 countries expressed their agreement, including Indonesia. Meanwhile, some countries that rejected the resolution were the United States, Iran, Iraq, Saudi Arabia, China, North Korea, and Vietnam.

The Indonesian Criminal Code (KUHP) regulates the criminal system in Article 10, which mentions two types of penalties: (1) Principal Penalties, consisting of (a) the death penalty, (b) imprisonment, (c) confinement, and (d) fines, (2) Additional Penalties, consisting of (a) revocation of certain rights, (b) confiscation of certain property, (c) publication of the judge's decision, and (3) Closing Penalties, based on Law Number 20 of 1946 concerning Closing Penalties (Anjari, 2015). Every person has the right to live and the right to defend their life and existence (Article 28A of the 1945 Constitution) (Anjari, 2015).

Imposition of the death penalty by a judge in his decision means that the state does not uphold the perpetrator's right to life (Anjari, 2015). Ordinary criminal law is called criminal law that emphasizes the act (*strafbaar heid van het feit*) and criminal law that emphasizes the person (*strafbaar heid van de persoon*) (Anjari, 2015). There are three things that are the focus of discussion in criminal law, namely criminal acts, criminal responsibility, and punishment.

There are legal sanctions in accordance with the rules of the state in the law. The types of penalties in Indonesian positive law are listed in Article 10 of the Criminal Code (Afif, 2021). These penalties are divided into primary and additional penalties. Primary penalties include: 1) the death penalty; 2) imprisonment; 3) confinement; and 4) fines. The death penalty, according to experts, is justified if the perpetrator of a criminal act has shown from his actions that he is a very dangerous individual to society (Margareta & Boediningsih, 2023). Therefore, he must be made powerless by being removed from society or from social interaction. Article 17 paragraph 4 is included in the book (Criminal Code, 2023) Attempting to commit a criminal offense that is punishable by a maximum prison sentence of death or life imprisonment, 15 (fifteen) years. There is a remission of the death penalty according to the legal policy if the prisoner performs positive attitude changes that can reduce the burden of the death penalty, meaning that they can receive a reduction in their prison sentence. The adoption of the moratorium on the death penalty was carried out in the following years and showed an increasing trend of support (Lazuady et al., 2022). In 2007, there were 104 countries in support and 54 opposed. Meanwhile, in November 2020, there were 120 countries in support of the resolution, 39 opposed, and 24 abstained. Meanwhile, in the 2022 resolution, the number of supporting countries increased to 125, while the number of opposing countries decreased to 37.

The concept of universal human rights has been widely discussed for more than half a century and has penetrated all aspects of human life (Asnawi, 2012). The universal human rights process is an international community effort to fight for, protect, and promote human rights worldwide. This universal human rights process is regulated by various international legal instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and many more. The universal human rights process consists of several stages, namely: Standardization: At this stage, the international community discusses and creates legal instruments that contain human rights standards that must be respected, protected, and fulfilled by all countries worldwide. Ratification: After the legal instrument is created, countries worldwide are asked to ratify the legal instrument, which means they agree and

commit to implementing the human rights standards contained in the legal instrument. Implementation: After the legal instrument is ratified by countries, the countries are expected to implement the human rights standards contained in the legal instrument. Countries are expected to apply human rights in various aspects of life, such as law, policy, practice, and government actions. (Brier & lia dwi jayanti, 2020b) According to F.J. Stahl, a state is called a rule of law (*rechtsstaat*) if it has four main elements, namely: (1) recognition and protection of human rights (*grondrechten*); (2) the state is based on the *trias politica* (separation of powers); (3) government is organized based on the law (*wetmatigheid van het bestuur*); and (4) there is a state administrative court responsible for handling cases of illegal actions by the government (*administratieve rechtspraak*).

The Republic of Indonesia still uses positive law (Lazuady et al., 2022). There are 39 countries that reject the abolition of the death penalty, 11 of which are from the Asia-Pacific, namely Afghanistan, Brunei Darussalam, China, India, Japan, Maldives, North Korea, Pakistan, Papua New Guinea, Singapore, and Tonga. Meanwhile, Indonesia takes an abstaining position along with 23 other countries, including Myanmar, Thailand, and Vietnam (HRW, 2020). In the 2022 voting, Indonesia chose to support but gave a number of statements regarding changes to the resolution's content. Among other things, the Indonesian delegation stated that the decision to abolish the death penalty or not is a decision that must be made by each sovereign state. Indonesian representatives warned against equating the use of the death penalty with torture or extrajudicial killing or arbitrary murder. The existence of the death penalty in Indonesia from a juridical-historical perspective is regulated in the Criminal Code, which mostly originates from the Netherlands or known as *Wetboek van Strafrecht (WvS)* (Hamenda, 2013). Law No. 26 of 2000 concerning Human Rights Courts, in Article 36, states: "Any person who commits acts as referred to in Article 8 letters a, b, c, d, and e shall be punished with the death penalty or life imprisonment or a maximum imprisonment of twenty-five years and a minimum imprisonment of ten years." (Hamenda, 2013). The settlement of serious human rights violations that occurred in the past has been accommodated in Law No. 26 of 2000 concerning Human Rights Courts (Muchinsky, 2000). Article 10 of the Criminal Code consists of (Pangaribuan, 2017): a. The main penalties are: 1. Capital punishment, 2. Imprisonment, 3. Detention, 4. Fine. b. Additional penalties: 1. Revocation of certain rights, 2. Confiscation of certain goods, 3. Announcement of judge's decision. The abolition of the death penalty in Indonesia is in line with the human rights issues and the increasingly strong Abolitionist movement (Indriyani, 2020). The Netherlands, which is the source of the Criminal Code (KUHP), abolished the death penalty in 1870.

Human rights are a set of inherent rights of human beings as creatures of God Almighty and are God's gift to place human beings in their dignity and position as human beings (Wijaya & Subroto, 2021). The practice of law in Indonesia can be divided into three levels: National level: The implementation of the law at the national level is led by the Supreme Court as the highest court in Indonesia. The Supreme Court has the task of resolving legal disputes and providing final judgments on cases submitted to it. In addition, there are other legal institutions such as the Attorney General's Office and the Indonesian National Police (Polri) who have duties and responsibilities in the application of the law. Provincial level: The implementation of the law at the provincial level is led by the High Court which has the task of resolving legal disputes at the provincial level. In addition, there are also District Attorneys and Regional Police who are responsible for the application of the law at the provincial level. District/city level: The implementation of the law at the district/city level is led by the District Court which has the task of resolving legal disputes at the district/city level. In addition, there are also Attorneys and Police at the district/city level who are responsible for the application of the law in the area. However, in practice, there are various problems in the implementation of the law in Indonesia, such as the low quality of court decisions, corruption in the judicial system, slow legal processes, injustice in law enforcement, and many more. Therefore, there is a need for efforts to improve and reform the judicial sector to improve the practice of law in Indonesia.

The practice of implementing the death penalty is regulated in Law Number 2/PNPS/1964 concerning the Procedures for Implementing the Death Penalty imposed by the court in the General and Military Judiciary that is still in effect today (Wijaya & Subroto, 2021).

Modern thinking is characterized by tragedy (Kusumo, 2015). Instead of fighting for the freedom of citizens (Habeas Corpus), many opposition groups who were considered as opponents of the French revolution, especially the aristocracy and the church, were sentenced to death by guillotine. The principle of the death penalty (Latin: "lex talionis") is a legal principle that states that the punishment must be commensurate with the offense committed. This principle is also known as "an eye for an eye" or "revenge". This principle is often used in criminal law systems to determine the punishment to be given to perpetrators of crimes. The principle of the death penalty can be found in various legal systems, both in the past and present. For example, this principle is found in the Hammurabi legal code from ancient Mesopotamia, where there is a list of punishments that must be given to perpetrators of crimes based on the type of crime committed. However, the principle of the death penalty is often criticized as being unfair and barbaric. Several countries have abolished the death penalty from their legal systems, while others still apply it for certain types of crimes. The principle behind any law created is to protect citizens (Yusuf, 2020). In this case, the death penalty sanction has been regulated in various criminal laws. A country cannot be accused of violating human rights for implementing the law.

Indonesia has a similar dimension in terms of viewing human rights (Zulfa, 2015). The Human Rights Charter set out in Tap MPR No. XVII/MPR/1998 is a decision issued by the People's Consultative Assembly (MPR) in 1998. This Tap MPR regulates the Amendment of the 1945 Constitution. Several things regulated in Tap MPR No. XVII/MPR/1998 include: adding provisions that the President and Vice President can be directly elected by the people, affirming that Indonesia is a democratic state based on the sovereignty of the people, adding provisions that MPR consists of members of the DPR and DPD, affirming that MPR has the task of amending or establishing the Constitution, and affirming that human rights must be respected, protected, and fulfilled. Tap MPR No. XVII/MPR/1998 is one of the important milestones in the history of Indonesia because it provides an opportunity for the people to directly elect the President and Vice President and affirms Indonesia's commitment as a democracy that respects human rights.

In Indonesia, the death penalty is still regulated in several laws, including the Criminal Code (KUHP) and Law No. 22 of 1997 on Narcotics. The death penalty is also still applied in criminal justice practices in Indonesia. However, since 2004, the implementation of the death penalty in Indonesia has been limited by a moratorium policy issued by the government. This means that although the death penalty is still applied in Indonesia, there have been no executions carried out since 2008. In 2019, Indonesian President Joko Widodo rejected the clemency requests from several drug convicts who were sentenced to death, resulting in executions. However, since then, there have been no executions carried out in Indonesia. The question of the death penalty policy in Indonesia continues to be a topic of debate and controversy. Some oppose the death penalty because it is considered to be contrary to human rights and ineffective in combating crime, while others still support the use of the death penalty as an effective form of punishment and a deterrent for criminals.

The latest version of the Indonesian Criminal Code (KUHP) will be released in 2026. The current Indonesian Criminal Code is still in effect based on Law No. 11 of 2020 on Job Creation, which legitimizes the KUHP as the basis of criminal law in Indonesia. The Indonesian KUHP itself is a criminal law code that was first promulgated in 1915 and has undergone several revisions to date. The latest revision was carried out in 2019 and was promulgated through Government Regulation No. 99 of 2019 concerning the Second Amendment to the KUHP. However, it should be noted that laws and regulations in Indonesia can be changed and revised according to the needs and development of the times. Therefore, it is possible that the Indonesian KUHP may undergo revision or changes in the future, including in 2026 or beyond.

4. CONCLUSION

The law in Indonesia has implemented the death penalty for criminals in order to serve as a deterrent for criminal acts that can harm oneself and society. The concept and understanding of the rule of law in Indonesia is still limited. The heaviest legal sanction is the death penalty, which is applied to perpetrators of crimes such as premeditated murder, sexual offenses, corruption, and the abuse of illegal drugs and narcotics as users or dealers who have been convicted by judges in court.

Indonesia adheres to the Pancasila state ideology, which is a rule of law state that requires the enforcement of social justice for all Indonesian people with the aim of increasing peace and social policy. The death penalty needs to be enforced in Indonesia to minimize excessive criminal acts, so that perpetrators can experience a real and firm deterrent effect. In principle, the death penalty is one of the severe sanctions in court because there is no leniency or humanitarian legal policy. The government can increase cooperation with the intelligence agency to not only react to acts of terror, but also quickly detect movements that could result in terrorism. Providing the consequence of the death penalty or life imprisonment for perpetrators of terrorism.

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