

Comparative Legal Analysis of the Death Penalty Law

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This research aims to analyze the regulation of criminal offenses punishable by the death penalty and compare the formulation of the death penalty between the Penal Code under Law Number 1 of 1946 (Dutch Colonial Penal Code) and Law Number 1 of 2023 concerning the Penal Code (National Penal Code). This study employs a normative legal research method with a statutory approach and a case approach. Legal data were collected through literature studies and analyzed qualitatively. The findings of this research indicate that the regulation of criminal offenses punishable by the death penalty in Indonesia is found in the Penal Code, the Narcotics Law, the Human Rights Law, the Corruption Crime Law, the Human Rights Court Law, and the Law on the Misuse of Firearms and Explosives. Furthermore, a comparison of the death penalty between the Dutch Colonial Penal Code and the National Penal Code of 2023 reveals a shift from the death penalty as a principal punishment to a death sentence with a probationary period and an alternative life imprisonment sentence. The comparison also includes differences in the legal basis, the formulation of the death penalty, the criteria for its application, and the procedures for its execution. This research recommends further studies on severe crimes that have not been explicitly regulated for the application of the death penalty.

INTRODUCTION

According to The 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is a state based on law, this is poured out in Article 1 paragraph (3) which states that the Republic of Indonesia is a state of law. In a state of law, this means all aspect life inside it must submit to everything product the laws in force in the territory of the Unitary State of the Republic of Indonesia alone. [1] In the case of this, the state is required capable For to uphold law and ratify democracy in a way fair which shows that law applicable equivalent for every individual added with existence existence binding law so that must obeyed by all layer society, and existence certainty clear and consistent laws.

One of the laws in force in Indonesia are law criminal. According to Moeljatno, law criminal [2] is part from all applicable law in a country that forms basics and rules For classify which actions are prohibited or No may done along with sanctions for those who violate in the form of criminal certain, determining time and conditions what can charged criminal to those who violate and determine How method criminal the can implemented with appropriate to offender regulation.

Function from law criminal in a way special is For protect interest law in the form of life human, body human, honor a person, independence a person and property object somebody. Which each one has set up in the Criminal Code (KUHP). [3] The purpose of from law criminal namely For prevent someone so as not to do crime, for educate and provide directions to someone who has violate regulations to become a better person well, with objective the main thing is guard order society, creating tranquility, well-being and peace in the environment society. [4] So that in a way general can concluded that objective from law criminal is protect interest public in a way general and specific from action that is not pleasant consequence action violate law that is carried out someone, then from That law criminal including to in law public because in it arrange interest

general .

Source law the main crime is the Criminal Code (KUHP) which plays a role as parent from regulation legislation that regulates prohibited acts and threats sanctions of course must based on from the Criminal Code. Source law other from law criminal is jurisprudence , law criminal international , provisions law criminal customs and doctrines or theory law from a expert law . [5] Understanding from criminal dead Alone is A policy the law that legalizes a country or system law For to drop punishment dead to perpetrator action crime Serious . It has been explained in the Al-Qur'an Surah Ash-Shura Verse 40. [6] Translation : “And reply a crime is similar crimes , then goods Who forgive and do Good so the reward on (the responsibility of) Allah. Actually He doesn't loves unjust people ”. Punishment dead has become an integral part of system law criminal law in Indonesia since colonial times . In this case This is Law Number 1 of 1946 concerning the Criminal Code (KUHP) becomes runway the main one who regulates implementation punishment death in Indonesia. Punishment This considered as sanctions highest for perpetrator crime heavy , like murder planning and betrayal , and reflect view society at that time to justice and enforcement law . Along with developments and changes values social , appear various criticism to implementation punishment dead . Many countries in the world have to abolish punishment this , good de jure or de facto, with reason that punishment dead contradictory with principle right basic human . [7]

In Indonesia, although There is rejection to punishment dead , government still maintain practice This as effort For protect public from crime heavy , especially in the middle increasing case drugs and terrorism . Changes significant happen with ratification Constitution Number 1 of 2023 which regulates law criminal new . Law This No only renew provision about punishment die , but also reflect aspiration a more society progressive and attentive aspect right basic human beings . [7] In the new law this , there is provisions that allow convict punishment dead For get subtraction punishment become prison lifelong life If show behavior Good .

The process of dropping criminal dead in Law Number 1 of 2023 it is regulated in Article 99 Paragraph 3 which states that the convict will shot dead and if convict in condition pregnant , then the shooting process done after convict give birth and the baby Already No consuming breast milk , as listed in Article 3. Criminal dead now become punishment alternatives that have category criminal alone based on Constitution Number 1 of 2023, not criminal main like in the previous Criminal Code . According to Article 67 of the Law Number 1 of 2023, criminal special is the criminal penalty is intended for cases extreme like act criminal heavy to right basic human , action criminal narcotics , crime criminal corruption and crime criminal terrorism and implemented as effort last . Alternative route This Can called as ultimate Remedy . [8]

Indonesia, as a country that remains apply punishment dead , trying guard safety and comfort public from punishment dead , with still pay attention and obey convention right basic international human . [9] This is in accordance with Constitution Number 1 of 2023 has allow there is reform towards implementation punishment died in Indonesia. In addition procedures and methods implementation punishment death in Indonesia is regulated in Regulation Head Republic of Indonesia National Police Regulation Number 12 of 2010 concerning Implementation Procedures Death Penalty .

Regulation Head Republic of Indonesia National Police Regulation Number 12 of 2010 and Law Number 1 of 2023 and Constitution Number 1 of 1946 has close relationship in arrangement punishment dead in Indonesia. Regulation Chief of Police Regulation No. 12 of 2010 regulates the procedures implementation punishment dead , give guidelines for apparatus police in carry out execution based on the judge's decision that has been powerful law remains . On the other hand , the Law Number 1 of 2023 concerning the new Criminal Code (KUHP) introduce a more approach humanist to punishment dead , including provisions that allow convict For get subtraction punishment become prison lifelong life If show behavior Good after undergo ten year prison . [10]

Temporary that , the Law Number 1 of 1946, which is law old criminal sentence , become base law

before existence change significant with Law No. 1 of 2023. Law No. 1 of 1946 more emphasize on implementation punishment dead without existence option rehabilitation or subtraction punishment , reflect a more approach stiff and traditional in system justice criminal . [11] Therefore that , is very important For done comparison between Law No. 1 of 2023 and Law No. 1 of 1946. This is aiming For understand evolution law criminal law in Indonesia, its impact to system justice , and implications social and moral of implementation punishment dead in context more modern and rights - oriented law basic man .

METHOD

Types of research This is study normative that is study law that is carried out with researching material library or secondary data . [12] Study This intended For find rules or existing legal norms about comparison to criminal dead in Law No. 1 of 2023 with Constitution Number 1 of 1946. The approach in study This with to examine some of the writings of the author read For made into as runway think in to unravel problematic (study) library). Do approach problem through The laws that exist in the old Criminal Code and the new Criminal Code . Types of research data This is secondary data in study law , namely data that can be accessed from answer search or review library to various literature or material continuous library with case or material frequent research known as material law . Secondary Data or bibliographic data or also called material law in study law with agreement No written from the experts researcher law , that material law That in the form of various group literature , materials primary law , material law secondary , material law tertiary .

DISCUSSION

Action Criminal Penalties Threatened with Death Penalty under Indonesian Criminal Law

Criminal dead is one of the form prescribed punishment in system law Indonesian criminal law . Although controversial and frequent trigger debate , punishment This still accommodated in various Constitution with objective give effect deterrent on act criminal the weight considered endanger public or country. [13] Implementation criminal death in Indonesia is regulated based on principle caution and through strict legal processes For ensure justice . Criminal dead first time loaded in the Criminal Code (KUHP) inheritance Dutch colonial , which later adopted by Indonesia. In addition to the Criminal Code, a number of Constitution specifically also includes threat punishment dead For various type act criminal certain , such as terrorism , narcotics , and corruption involving state losses in amount big . [11] The law which includes criminal dead as following :

KUHP (Criminal Code)

The Criminal Code is gathering regulation law criminal acts that become reference main in arrange various act criminal law in Indonesia. In the Criminal Code, criminal law dead set up as punishment highest For crimes certain offences which are considered very serious . The punishment dead enforced with objective give effect deterrent and protective interest general from threat serious . As for one of the the article that regulates criminal dead in the Criminal Code is Article 104: Treason against Head of State Article 104 of the Criminal Code (KUHP) regulates that Who only one who does treasonous acts , namely effort For overthrow legitimate government or endanger safety President or Vice President , can sentenced punishment dead as form punishment highest . [14]

Constitution Number 35 of 2009

Number 35 of 2009 concerning Narcotics is runway the law used by the Indonesian state for

regulate , prevent , and handle problem abuse as well as circulation dark narcotics . Narcotics in Indonesia are considered as threat Serious Because its damaging impact generation youth and society in a way overall . Therefore that , the law This own very strict provisions , including implementation punishment dead to perpetrator act criminal certain related with narcotics , especially those involving production , distribution , or smuggling narcotics in amount big or which results in loss of life .

In law this , one of chapter with threat criminal dead explained in a way detailed in Article 113 Paragraph (2): Misuse Narcotics Group I in Large Amount of this Article arrange threat criminal dead for the perpetrators involved in abuse narcotics group I (such as crystal methamphetamine , heroin, cocaine , ecstasy , etc.) in amount big , through production , transportation , or smuggling . If someone involved in activity produce narcotics in amount big , carrying narcotics the in a significant amount , or smuggle narcotics in amount big , they can sentenced punishment dead , especially If action the endanger public in scale big . [15]

Abuse narcotics group I in amount big indicates existence activity organized and syndicated big one who has potential damage public in term length . Example implementation chapter This is if somebody involved in production crystal meth in amount more from 1 kilogram, or smuggle narcotics group I with amount big to Indonesia. This is very dangerous. Because narcotics in amount big can cause extensive damage for health society , including abuse by users and improvements amount addict .

Constitution Number 5 of 2018 concerning Eradication Action Terrorism Crime

Constitution Number 5 of 2018 concerning Eradication Action Criminal Terrorism is revision from Constitution Number 15 of 2003 which aims to strengthen Indonesia's efforts in eradicate terrorism . Eradication terrorism become very important remember the threat posed by the action terrorism , which is not only threaten safety and order society , but also can shake stability of the country and trigger fear among society . [16]

Therefore that , in Constitution this , is applied threat criminal dead for the perpetrators terrorism that is carried out actions certain things that are very dangerous , both domestically and involving Work The same international . In the law this , one of chapter with threat criminal dead explained in Article 6: Using Violence or Threat Violence with the Aim of Creating Atmosphere Terror or Fear in Society.

Article 6 regulates that Who only those who use violence or threat violence with objective create atmosphere terror or fear in society can charged criminal dead . Violence or threat the violence in question covers all form action physical causes damage physique or mental, such as murder , assault , destruction , or even threat bomb that can cause fear among public .

Example actions that can be charged criminal dead based on chapter This is If perpetrator do bombing on site public , such as markets, places of worship, or facility general others , with objective For creates fear and tension social . Actions such as This aiming For shake calm society and show strength or influence from group terrorists . With give threat criminal dead , the country wants give very strong signal to act destructive violence peace and stability of the country.

Constitution Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication Action Criminal Corruption

Constitution Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication Action Criminal Corruption is one of regulation important in system Indonesian law which aims For eradicate act criminal corruption , which is considered as crime outside extraordinary crime because its damaging impact all over aspect life society . Corruption potential destroy order social , economic , and political , as well as to worsen poverty , injustice and

inequality social . Therefore that , the law This arrange in a way Details about eradication corruption and implementing threat criminal dead in condition certain matters which are very serious and detrimental to the state, such as in the articles which regulate act criminal corruption in condition emergency . [17]

One of the article that regulates threat criminal dead in Constitution This is Article 2 Paragraph (2) which in effect special mention giving criminal dead for perpetrator corruption that occurred in condition emergency , such as disaster nature , crisis monetary , or a very influential situation stability of the country. Condition emergency This Can in the form of disaster natural big that causes damage severe across the region, the crisis monetary ruin the country's economy , or condition certain threatening sovereignty and security of the country. In conditions like this , everything form corruption committed by officials or the party that has power considered as very serious crime Because can to worsen conditions and extend people 's suffering experience difficulty .

Corruption that occurred in condition emergency own very big impact to stability of the country. In a situation emergency , the country needs source sufficient and appropriate power time For handle current state taking place . When the source Power the diverted or used For interest personal , then No only the country's economy that will affected , but also the impact more social wide , including decline quality life society , decreasing service essential public , as well as increasing people's distrust of government and state apparatus .

Corruption in condition like This even can fatal , worsening people 's suffering need help . In a situation disaster nature , for example , if assistance provided No until to the victim because misused , the victim will the more suffer , which in the end can increase number death , prolonging the recovery period , and hindering the rehabilitation process . social . Therefore that , Article 2 Paragraph (2) in Constitution Eradication Action Criminal Corruption give threat criminal dead For give effect maximum deterrent , so that the perpetrators act criminal corruption in situation emergency can punished with appropriate punishment with his crimes .

Constitution Number 26 of 2000 concerning Human Rights Court

Constitution Number 26 of 2000 concerning Human Rights Court Human (HAM) is one of the step Indonesia's significant in give protection to right basic human and handle very serious crimes , especially those involving violation heavy to right basic humans , such as genocide and crimes to humanity . Law This aiming For create justice and accountability for perpetrator crime big that has cause suffering outside normal for individual or group in society . In terms of this , threat criminal dead set up For perpetrator violation heavy right basic destructive human values humanity and cause damage big in society . Criminal dead considered as a fitting punishment for the actors involved in very terrible crimes this . [18]

Article 9 in Constitution Number 26 of 2000 regulates punishment criminal dead for those who do crime systematic to population Civil . Crime This covers various actions taken in a way organized and in scale big to group civil , such as murder mass killings , torture , and slavery . These crimes This considered as violation heavy to right basic man Because aiming For destroy life individual or group in public in a way comprehensive .

Example concrete from crime systematic to population civil is massacre mass carried out with objective certain , such as For press or remove group ethnicity or political certain . Torture to individual or group civil , for example torture to prisoner or inhabitant civilians who are not involved in conflict , also included in category this . In addition , slavery or coercion individual For Work without wages , or in very bad condition and without right basic , is another example of violation systematic to rights civil listed in chapter this . [18]

Comparison Arrangement Formulation The Death Penalty between the

Criminal Code (Dutch Colonial Criminal Code) and Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code)

Comparison arrangement formulation criminal dead between the Dutch Colonial Criminal Code (KUHP) and Law No. 1 of 2023 concerning the Criminal Code (National Criminal Code) shows change significant in approach law criminal law in Indonesia. The following description about comparison said : [8]

Legal Basis and Approach in Arrangement The death penalty in the Dutch colonial criminal code which began enforced in Indonesia during the colonial period 1918 was based on the principle law Dutch criminal law , with a very repressive approach . In the system this , punishment dead be one of form criminal the given subject For various act criminal heavy like murder planning , betrayal against the state, or crime outside normal other .

Approach law This designed For guard order public with to uphold law in a way firm and giving effect deterrent maximum to perpetrator . System law criminal This No give room for rehabilitation or recovery for the perpetrator , but rather focus completely on condemnation and elimination threat to stability social . Approach the put forward firmness law without consider condition social , psychological , or opportunity change behavior from perpetrator . Punishment dead in the Colonial Criminal Code is final, without existence trial period concept or mechanism subtraction punishment after dropped . [8]

the other hand , the National Criminal Code was ratified in 2023 through Law No. 1 of 2023 represents a major reform in system law Indonesian criminal law . Approach in this Criminal Code more humanist , modern, and rehabilitation - oriented . Punishment dead in the National Criminal Code it is regulated as criminal special , which is only can dropped For act very serious crimes , such as terrorism resulting in loss of life , crime narcotics in scale big , and violation heavy to right basic humans , such as genocide . In addition , the new Criminal Code introduce trial period concept during ten year , as set up in Article 100, which provides room for convict For show regret and change behavior . If during the trial period convict show behavior good , punishment dead can changed become criminal prison lifelong life through Presidential Decree after consider recommendation Supreme Court . Approach This reflect view that punishment No only aiming give effect deterrent , but also gives chance for perpetrator For repair self .

More Far again , the National Criminal Code also pays attention aspect humanity in implementation punishment dead . For example , a woman who is pregnant , mother breastfeeding , or individual with disturbance soul No can sentenced punishment dead . Approach This in harmony with principle respect to right basic human and effort For to balance enforcement strict law with protection values humanity . This reform show shift paradigm from approach inherited repression from the colonial era going to approach law more criminal progressive , humanistic , and just .

Formulation Death Penalty in the Dutch Colonial Criminal Code and the National Criminal Code

In the system law criminal acts regulated by the Dutch Colonial Criminal Code , criminal acts dead is final and not give room for rehabilitation or change punishment after dropped . When someone stated guilty and sentenced punishment dead , execution implemented quick after legal process finished , without there is a trial period or mechanism assessment repeat . Approach This reflect character law repressive criminal law at that time , where the focus was main is on sentencing perpetrator For give effect deterrent and protective public in a way fast and firm . There is no consideration related behavior perpetrator after decision dropped , moreover opportunity For repair self or show regret . punishment dead in system This considered as form sanctions peak For crime heavy , with the nature of not flexible and closing possibility recovery . [11]

Different with approach said , the National Criminal Code was ratified through Law no. 1 of 2023

brings paradigm newer one progressive and humanist in arrangement criminal dead . Through Article 100, the new Criminal Code introduce trial period concept during ten year before punishment dead implemented . During the trial period this , the convict given chance For show deep regret , behavior good , and potential For rehabilitated .

If the convict succeed show significant changes during the probationary period , the punishment dead can changed become criminal prison lifelong life through Presidential Decree , with consideration recommendation from Supreme Court . Mechanism This No only give room for perpetrator For repair self but also reflects the state's commitment to respect right basic human . Formulation in the new Criminal Code This show existence significant shift from a purely individualistic approach punish going to a more approach rehabilitative . Punishment dead No Again viewed as sanctions absolute and final, but as criminal special only implemented If perpetrator fail show effort repair .

Approach This reflect modern philosophy in law criminal law , which emphasizes balance between justice , protection society , and recognition to potential change in the guilty individual . With Thus , the National Criminal Code shows step proceed in legal reform criminal law in Indonesia, integrating principle humanity without reduce firmness in take action crime heavy .

Criteria Implementation Death Penalty in the Dutch Colonial Criminal Code and the National Criminal Code

In the Dutch Colonial Criminal Code , the criteria implementation criminal dead covers various crime heavy with very broad coverage . [19] Punishment dead can dropped For act criminal like murder planning , betrayal against the state, or other crimes are considered endanger stability social and political . Approach This No give Lots room For consider personal factors of perpetrators , such as background behind social , age , or condition psychological . Criteria its implementation nature uniform and repressive , aimed at For give effect maximum deterrent without care about condition individual the perpetrator . This is reflect system the law at that time was more focuses on punishment and protection public than aspect rehabilitation or humanity .

Different with approach In this regard , the National Criminal Code (Law No. 1 of 2023) regulates criteria implementation criminal dead in a way more selective and humanistic . [8] In the new Criminal Code , the criminal dead only can dropped For act criminal certain matters which are considered very serious , such as terrorism , violation right basic man weight , and production or distribution narcotics in amount big impact widespread in society . Criteria This designed For ensure that criminal dead only given in a real case extreme and involving threat real to security national or safety public .

In addition , the new Criminal Code also introduces various considerations that indicate attention to aspect humanity . For example , criminal dead No can dropped to the woman who is pregnant or breastfeeding , as set up in Article 100 of the new Criminal Code . Likewise , individuals who experience disturbance soul No can charged punishment dead . Terms This reflect commitment to protection group vulnerability and respect to right basic human , even though in context enforcement law to crime weight . [7]

With a more approach selective This , the National Criminal Code shows shift from system uniform and rigid law going to more system adaptive to condition actors and context act criminal . Approach This No only aiming For to uphold justice , but also for give room for protection rights base human , make system Indonesian law more in line with principles global justice .

Procedure Implementation Death Penalty in the Dutch Colonial Criminal Code and the National Criminal Code

Procedure implementation punishment dead in the Dutch Colonial Criminal Code it is regulated in

Regulation Chief of Police No. 12 of 2010 is of a nature stiff, direct, and not give room for convict For submit clemency or effort other laws after decision dropped. When the court to drop punishment dead, execution done quick after legal process finished without consider opportunity rehabilitation, regret, or change behavior perpetrator. Approach This reflect characteristic repressive law criminal law at that time, where the punishment was dead considered as end from the legal process, without existence effort For review return condition convict or other factors that can influence implementation punishment. Procedure implementation execution done without consider aspect humanity, so that often causes criticism, especially in context treatment to right basic human. [19]

On the other hand, the National Criminal Code (Law No. 1 of 2023) provides more settings detailed, transparent and humanistic related procedure implementation punishment dead. In the new Criminal Code, before execution done, convicted own right For submit clemency to President. If the application clemency rejected, then execution can done, but with a very careful and considered procedure aspect humanity. Implementation punishment dead must carried out in a private place and not in front of general, with objective guard dignity convicts, victim's families, and the community wide. In addition, the implementation punishment This must carried out by authorized officers with methods that have been arranged, so that No cause excessive suffering for convict. [8]

Change This show shift paradigm in system law Indonesian criminal law, where the punishment dead No Again considered as form full punishment is final, but seen as step the last thing to do taken after all effort law and evaluation on behavior convict done. With give room For submission pardon and ensure that execution done in a way humane, new Criminal Code No only aiming For to uphold law, but also shows commitment to respect right basic human. [20] Procedure This reflect balance between justice retributive For perpetrator crime weight and justice restorative that provides opportunity for convict For repair self during the waiting period execution.

CONCLUSION

Arrangement Action The threatened criminal penalty with Death Penalty based on law in Indonesia can seen in the Criminal Code, Law Narcotics, Human Rights Act Human, Law Action Criminal Corruption, Law Human Rights Court and Law Abuse Firearms and Explosives. Comparison The Death Penalty in the Dutch Colonial Criminal Code and the 2023 National Criminal Code shows shift from criminal main become criminal dead with trial period and alternatives punishment prison lifelong life. Comparison other located at the base law, formulation criminal dead, criteria implementation criminal dead as well as procedure implementation criminal dead. The need for evaluation to a number of act criminal with type crime heavy like Crime to Undeveloped environment in a way explicit set up For charged criminal dead, even though impact his crime is very big to society. The need for assessment more carry on to criteria implementation criminal dead and procedure implementation criminal dead in a way specific

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