

The Existence of the Death Penalty in Indonesia After the Rating of Law Number 1 of 2023 Concerning the Criminal Law Book

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Abstract. The examination entitled The Presence of Capital punishment in Indonesia after the endorsement of Regulation The specific question that needs to be investigated is raised by Law No. 1 of 2023 regarding the Crook Code, and it is titled "How the Existence of the Death Penalty Post Law No. 1 of 2023 concerning the Code of Laws Crime and How to Reform the Death Penalty as a Special Punishment for Certain Criminal Acts". This examination utilizes a regularizing kind of exploration, utilizing optional information, to be specific information got straightforwardly through library materials through documentation studies, which comprise of essential lawful materials. The existence of the death penalty in Indonesian positive law is still maintained, this can be seen from various legal provisions (the Crook Code and other legal guidelines), the burden of capital punishment as per the sentences in the Lawbreaker Code, is generally an option in contrast to different sorts of discipline. Regulation Number 1 of 2023 concerning the Crook Code, Articles 64 and 67 direct capital punishment as an exceptional discipline for specific crook acts determined in the law which is a wrongdoing that generally conveys an elective danger.

Keywords: Existence; Death Penalty; New Criminal Code

1 Introduction

The death penalty is a punishment given to someone who has been found guilty of certain crimes by the criminal justice system, and as a consequence, the person is sentenced to death by the government or competent authority. This punishment is usually given for crimes that are considered very serious, such as premeditated murder, terrorism, or narcotics trafficking in many jurisdictions. The death penalty is generally carried out through a predetermined method of execution, such as hanging, shooting, lethal injection, or other methods by the laws in force in a country. However, it is important to remember that execution practices and death penalty laws vary across countries and are often the subject of controversial debate.

The death penalty is still applied in Indonesia for certain criminal cases. The death penalty in Indonesia is usually given for crimes that are considered very serious, such as narcotics, terrorism, and premeditated murder resulting in death. The death penalty process in Indonesia usually involves a fairly long and complex trial process. Defendants sentenced to death can

appeal to a higher court to try to overturn their death sentence or have it commuted to life in prison. Attitudes towards the death penalty in Indonesia have been a topic of long and controversial debate. Several community groups and human rights organizations at home and abroad have criticized the implementation of the death penalty in Indonesia and urged the government to abolish the death penalty completely.

The death penalty is a controversial topic in the fields of law and ethics, and many experts have voiced varying opinions on the issue. The following are some of the arguments frequently put forward by experts in favor of or against the death penalty. Some people argue that the death penalty is an appropriate form of revenge for perpetrators of serious and cruel crimes. They believe that serious crimes should be punished with equal severity as a form of justice. Proponents of the death penalty argue that it can be a powerful deterrent for perpetrators of serious crimes and has the potential to deter similar crimes in the future. Another argument is that the death penalty can protect society from serious crimes by eliminating dangerous and irreversible offenders.

One of the main arguments put forward by opponents of the death penalty is that it is a violation of human rights. The death penalty is considered inhumane treatment and can be considered a form of torture or arbitrary execution. There is often concern about the release of wrongly accused people after their execution. The justice system is not perfect, and the risk of executing innocent people is a very serious matter. Some studies show that the death penalty does not significantly affect crime rates any more than life imprisonment without parole. In some cases, the costs of the death penalty legal process can also be higher than life imprisonment. There is also a moral argument that states that no human authority should have the power to take another person's life, regardless of the wrong they have done.

The presence of capital punishment in Indonesian positive regulation is as yet kept up with, this should be visible from different legitimate arrangements (the Crook Code and different regulations and guidelines). With the proclamation of the new Crook Code (Regulation Number 1 of 2023 concerning the Book of Criminal Regulation), capital punishment is as of now not a fundamental wrongdoing but a special crime (narcotics, terrorism, corruption, and human rights). This shows that the politics of criminal law has been implemented by upholding human rights and as a result of the comparison of criminal legal systems that have developed in several developed countries such as America which regards capital punishment as a unique discipline that is constantly undermined on the other hand.[1]

In view of the contemplations over, the writer is keen on directing examination and composing an article with the title The Presence of Capital punishment in Indonesia After the Endorsement of Regulation Number 1 of 2023 concerning the Lawbreaker Code.

2 Problem Formulation

1. How does the death penalty exist after Law Number 1 of 2023 concerning the Criminal Code?
2. How is the reform of the Death Penalty as a special punishment for certain criminal acts implemented in Indonesia?

3 Research Methods

Lawful exploration is a logical movement, which utilizes specific techniques, systematics, and thinking, to concentrate on one or a few specific legitimate peculiarities, by examining them. Aside from that, an inside and out assessment of the lawful realities should be done, and endeavors should be made to determine issues emerging from these legitimate peculiarities.[2]

This exploration utilizes a sort of regulating research, utilizing optional information, to be specific information got straightforwardly through library materials through documentation studies, which contain fundamental genuine materials, scilicet adding authentic materials associated with the evaluation point, discretionary legal materials, and tertiary genuine materials. [3]

4 Analysis and Discussion

4.1 The existence of the death penalty after Law Number 1 of 2023 concerning the Criminal Code

Criminal regulation is the law that controls infringement and wrongdoings against the public interest, activities which are undermined with discipline which comprises enduring or torment.[4]

Moeljatno also stated a similar and detailed statement, according to which criminal law is some portion of the complete regulation in force in a country, which gives the rudiments and rules for:[5]

1. Figure out which activities may not be completed, which are disallowed, joined by dangers or assents as specific punishments for anybody who disregards these denials;
2. Decide when and in what cases the people who have disregarded these preclusions might be dependent upon or condemned to the criminal punishments that have been compromised;
3. Decide how the criminal inconvenience can be executed on the off chance that somebody is associated with having abused the preclusion.

Capital punishment in Indonesia is directed by a few important regulations and guidelines. Coming up next are a portion of capital punishment regulations in Indonesia, in particular: Criminal Code (KUHP): Capital punishment in Indonesia is managed in the Crook Code, particularly in Section XV "Capital punishment"; the Law on Narcotics states that the death penalty can be applied against certain narcotics perpetrators or abusers, depending on the level of the crime; the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition also includes the death penalty as a punishment for certain economic crimes; the Law on the Eradication of Terrorism Crimes regulates the death penalty for perpetrators terrorism which carries out actions that result in the death or accident of other people; and the decision of the Indonesian Constitutional Court has evaluated several cases related to the death penalty and provided decisions regarding the constitutionality of the death penalty in certain cases.

The presence of capital punishment in Indonesian positive regulation is as yet kept up with, this should be visible from different legitimate arrangements (the Lawbreaker Code and different regulations and guidelines). When forming the law, it was stated in the explanation that the death penalty was based on the special circumstances of Indonesia as a Dutch colony.[6]

In Indonesia, the use of the death penalty as a tool to tackle crime is also inseparable from its pros and cons, this is because the perception of the death penalty is greatly influenced by the nation's cultural background and outlook on life. The issue of capital discipline is firmly connected with the construction of society, political circumstances, and social qualities that exist in that society.[7]

In principle, the death penalty is more directed at protecting the interests of society. Another aspect of community protection is the protection of victims and the restoration of the disturbed balance of values in society. So it is natural that the National Criminal Code still maintains the types of serious criminal sanctions, namely being included in the "basic crimes" list, and placed separately as a special or exceptional type of crime. As stated in the Explanation to Article 67 of the Criminal Code, the death penalty is included in a separate section to show that this type of crime (narcotics, terrorism, corruption, and human rights) is truly special. Because it is the most serious type of punishment, the death penalty must always be rebuffed on the other hand with different sorts of discipline, specifically life detainment or a greatest detainment of 20 (twenty) years.

The death penalty has been known since ancient times and can be said to be a crime that has been used for a long time besides imprisonment. In the era of legislation or the law of the Prophet Moses (Mozaische wetgeving), as well as in the era of Greek, Roman, and German law, the death penalty was known in Indonesia.[8] The death penalty was known before Indonesia became a Dutch colony, although later by Daendels (a representative official of the Dutch colonial government in Indonesia), the death penalty which already existed in customary law was then made into written law as stated in a plaque dated April 22, 1808, which where the court is permitted to impose penalties in the form of being burned alive at a stake (paal), being killed using a keris (kerissen), being branded burnt (brandmerken), being beaten (geeselen), being beaten with a chain, being detained (put) in prison (confinement), and forced labor in public works.[9]

In the fields of criminal law and criminal justice, sentencing, particularly the death penalty, is a significant issue. Accordingly, cycles, exercises, and independent direction should be resolved admirably, specifically, and impartially. Not only must procedural law be used to impose the death penalty, but it must also be related to justice, legal certainty, human rights, the purpose of the punishment, and a nation's criminal politics. According to Muladi, five indicators must be considered in imposing the death penalty, namely objective things related to the act, subjective factors about the perpetrator, the public's impression of the crime, the size of the loss or victim of the crime, and the judge's prediction in imposing the crime. .[10]

The Indonesian criminal regulation framework perceives capital punishment as an assent. Capital punishment is the heaviest approval in the current guidelines in Indonesia and is remembered for Article 10 of the Crook Code. A few guidelines in Indonesia incorporate capital punishment, particularly in exceptional regulations outside the Lawbreaker Code. In Indonesia's criminal regulation framework, thirteen regulations contain capital punishment sanctions in unique regulations outside the Lawbreaker Code. These approvals are forced on offenses contained in the Lawbreaker Code and offenses outside the Crook Code.[11]

Thusly, in the conversation of the new Crook Code, Indonesia has the possibility of the 'Indonesian way', which positions capital punishment regulation if all else fails and the super lawbreaker endorse. With the idea of the Indonesian way, to be specific capital punishment, an individual condemned to death will be given a trial time of 10 (a decade. In the event that the convict shows appropriate conduct, lament shows up, and the sentence can be changed to life detainment or lighter than the past sentence. Then this idea was mentioned in Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code which was ratified on

December 6 2022 as a law that replaced the Dutch East Indies Criminal Code which had been in use for approximately 104 (one hundred and four) year. However, the Criminal Code Law can be used in the future after 3 (three) years of being passed into law or more precisely in 2026. With this, the death penalty law will be categorized as a special criminal law or what is called a conditional death penalty law.[12]

In Indonesia, in the improvement of criminal and condemning change, the goals and rules for discipline have been figured out in the new Crook Code (Regulation Number 1 of 2023 concerning the Lawbreaker Code). He formed the targets and rules for discipline, in light of the reason that the criminal regulation framework is a bound together framework with a reason (purposive framework), and discipline is just a device/means to accomplish the objective. In the meantime, criminal targets are a basic part (sub-arrangement) of the whole criminal framework (criminal regulation framework) notwithstanding other sub-frameworks, specifically the lawbreaker act, criminal obligation (responsibility), and criminal sub-frameworks. Seen practically/functionally, the criminal framework is a progression of cycles through the detailing stage (regulative strategy), the application stage (legal/judicative arrangement), and the execution stage (regulatory/leader strategy). Subsequently, for there to be reconciliation between the three phases as a bound together criminal framework, figuring out targets and rules for punishment is fundamental. For this situation, the definition of targets and rules for discipline is planned as a requesting/controlling/coordinating capability as well as giving a philosophical premise/establishment, objectivity, inspiration, and support for discipline.[13]

Keeping up with capital punishment and making it an elective discipline that is applied specifically to specific violations, including directing the expiry of capital punishment as chosen by the court, shows that the detailing of capital punishment is still "risky". The utilization of capital punishment as an extraordinary discipline and consistently deserving of elective means is the right split the difference for the people who are for and against this discipline. From one viewpoint, a few crook acts are deserving of capital punishment, particularly for serious violations. In the meantime, then again, there is mindfulness that capital punishment is an intense discipline and couldn't in any way, shape or form be revised on the off chance that there is a mistake in the adjudicator's choice.[13]

From a criminal hypothesis point of view, ethically, capital punishment is fair retaliation for the misfortunes brought about by the culprit of a lawbreaker act. Capital punishment guidelines in the new Lawbreaker Code, which plan to safeguard general society, including crime victims, basically refer to deterrence theory. As per the deterrence theory, the death penalty is aimed at special prevention and general prevention. Special prevention is expected to prevent perpetrators from repeating their actions. Meanwhile, general prevention aims to ensure that other people, subsequent to seeing the discipline applied to culprits of criminal demonstrations, don't carry out similar lawbreaker acts. However, the new Criminal Code's goals for punishment are inconsistent with the methods used, which is a problem when referring to them. A portion of the criminal targets that have been planned won't be accomplished utilizing criminal means. The utilization of capital punishment can not mingle the convict and resolve the contention brought about by the crook act.[13]

Existence is a term that refers to the existence or existence of a thing or entity in the real world. This includes the existence of everything, both living objects (such as humans, animals, and plants) and inanimate objects (such as rocks, buildings, and other physical objects). Existence is a philosophical concept that is often debated and is the focus of attention in various contexts, such as philosophy, theology, psychology, and other sciences. Questions like "Why is there something rather than nothing?" or "What is the meaning of human existence?" are philosophical questions related to existence.

The existence of the death penalty in Indonesia is a very complex issue, apart from being a cultural and religious issue, the death penalty is also political. According to A.Z. Abidin in the book *Anthology of Criminal Law* in 1983 published by PT. Pradnya Paramitha explained that in terms of the death penalty, there are two conflicting poles, namely the group of death penalty defenders who say that to deter and frighten criminals, the death penalty is needed and the execution of the cessation penalty if carried out correctly, is relatively painless. However, on the other hand, the group that opposes the death penalty, the group that opposes says that the death penalty can cause injustice, its implementation causes a lot of pain and is very ineffective as a deterrent.[14]

As per Vortex Hiariej, the upkeep of capital punishment in Indonesia depends on three reasons. To start with, basically, the danger of capital punishment is as yet required. Second, the danger is restricted to specific violations in the unprecedented class. Third, specialization as a trial time of 10 years is a chance for convicts to show improvement.[15]

The existence of the death penalty in the new Criminal Code shows that Indonesia is taking a stance as a country that is retentionist or maintains the death penalty. This retention is seen in the 10-year probation period or the opportunity to apply for clemency for death row inmates.[15]

The burden of capital punishment as per sentences in the Lawbreaker Code is consistently an option in contrast to different sorts of discipline, to be specific detainment, either life detainment or detainment for a limit of 20 years (brief detainment for a very long time), this ought to be apparent in the meaning of Article 340 of the Convict Code concerning arranged murder. The existence of the death penalty in Indonesia has prompted responses from a variety of experts in criminal law, criminology, victimology, and even the general public. These responses, particularly those related to the philosophy of punishment, have emphasized that punishment must not only focus on the victim in order to develop the restorative justice theory approach.

The presence of capital punishment is as yet vital later on and isn't connected to the primary reason for discipline and capital punishment must be forced if all else fails to safeguard society. Consequently, the judge must carefully consider all aspects of the convict's person, family, and environment before imposing the death penalty. Concerning advantages and damages that will emerge from the burden of capital punishment, in the holding up period before capital punishment is completed, in particular when their lives are going to be taken, death row detainees should in any case have their common liberties regarded, by getting direction like different detainees.[16]

4.2 Renewal of the Death Penalty as a special punishment for certain criminal acts implemented in Indonesia

The death penalty is a person's life that is forcibly taken by a party authorized to do so. This is caused by the consequences of criminal acts committed and cannot be justified according to criminal law. As a filter for the implementation of the death penalty in Indonesia, there must be a presidential execution fiat regarding the refusal of clemency if the defendant asks for clemency. The execution of the death penalty itself can be postponed if the defendant is pregnant and/or mentally ill, this is due to the human nature that must exist as stated in Law Number 48 of 2009 concerning Judicial Power.[17]

Capital punishment in the old Crook Code, Article 10, which is a heritage from the Netherlands, is the primary wrongdoing. The arrangements of Article 11 of the old Crook Code made sense of that capital punishment was carried out by the executioner at the hanging place

by tying a rope to the gallows around the neck of the convict and then dropping the board on which the convict was standing.

In its development, death penalty execution is the implementation of the death penalty against a prisoner who has been sentenced to death by the court. This execution is usually carried out as the end of all judicial processes and appeals that the prisoner may have gone through. In Indonesia, the method of executing the death penalty that is generally used is shooting to death (shooting). There are no regulations governing detailed execution methods in Indonesian law, but shooting to death has become a common method in practice. Executions are usually carried out by trained firing squads.

The Commission for Missing Persons and Victims of Violence (KontraS) recorded 27 death sentences carried out from October 2022 to September 2023. KontraS stated that efforts to abolish the death penalty still face a steep road.[18] Meanwhile, throughout 2022, courts in Indonesia sentenced 145 people to death, down from 171 in the last year and 210 in 2020, according to ICJR data.[19]

According to Professor Topo Santoso, in the matter of the death penalty, although many parties oppose it, there are still many who support it. Pros and cons always arise. Every time a death sentence is carried out, every time there is a debate. Arguments for rejecting/abolishing the death penalty (abolitionists) usually revolve around moral/religious arguments, namely that only God gives life to humans and only He has the right to revoke it. There is also an argument for the low effectiveness of the death penalty. Another argument that is often raised by those opposing the death penalty is the fact that the criminal justice system is still weak and has many shortcomings which are very likely to produce innocent victims who must be sentenced to death. Another important argument against the death penalty is that the death penalty is contrary to human rights, especially the right to life. In Durham, the right to life is clearly stated. This has also been clearly explained in the post-amendment 1945 Constitution. The right to life is constitutionally guaranteed.[20]

Efforts to reform criminal law in Indonesia must be based on the national goals that the Indonesian nation wants to achieve as an independent and sovereign country. As such, criminal regulation change should be a method for safeguarding the whole Indonesian country and Indonesia's blood, propelling general government assistance, making the country's all's life shrewd, and adding to the execution of a world request in light of timeless opportunity and civil rights. Regarding criminal law reform, there are at least two goals that criminal law and criminal law want to achieve, namely internal goals and external goals. The aim is to reform criminal law as a means of protecting society and the welfare of Indonesian society. In connection with the growth of international crime, the intention of leaving is to participate in the establishment of world order. The execution of capital punishment by shooting the convict depends on the thought that up to now this strategy is viewed as the most empathetic. A ten-year probationary period can be used to conditionally impose the death penalty.

After the proclamation of Regulation Number 1 of 2023 concerning the Crook Code (New Criminal Code), it will come into effect in 2026 replacing Wetboek van Strafrecht (WvS) which was inherited by the Dutch colonial government. The new Criminal Code is considered a milestone in Indonesian criminal law politics, especially regarding the regulation of the death penalty. Article 100 of the new Crook Code currently forces capital punishment with a trial time of 10 years. If during this period the death row detainee is considered to have done praiseworthy perspectives and activities, then capital punishment forced can be changed to life detainment in view of an Official Pronouncement in the wake of hearing the contemplations of the High Court. These progressions reformulate the retributive-situated discipline worldview in a more rehabilitative heading.[21]

Regulation Number 1 of 2023 concerning the Lawbreaker Code, Article 64 manages the kinds of wrongdoings as (a) principal wrongdoing; (b) more punishments; furthermore (c) extraordinary punishments for specific lawbreaker acts determined in regulation. According to Article 67, the death penalty, which always carries an alternative threat, is the special punishment envisioned in Article 64, letter c.

In the clarification of Regulation Number 1 of 2023 concerning the Crook Code, capital punishment is excluded from the request for the principal sorts of discipline. Capital punishment is determined in a different article to show that this kind of discipline is genuinely unique if all else fails to safeguard society. The death penalty is the most serious discipline and must persistently be rebuked then again with life confinement or a biggest confinement of 20 (twenty) years. Capital punishment is forced with a probation period, inside the probation period the convict is supposed to have the option to work on himself so capital punishment needn't bother with to be done and can be supplanted with life detainment or a greatest detainment of 20 (twenty) years.

In the clarification of Article 67 of the New Lawbreaker Code, it is expressed that criminal demonstrations that can be rebuffed with unique violations are intense or exceptional crook acts, including, among others, opiates wrongdoings, psychological warfare violations, debasement wrongdoings, and serious wrongdoings against basic liberties. Hence, capital punishment is remembered for a different segment to show that this kind of discipline is genuinely exceptional. When contrasted and different sorts of discipline, capital punishment is the most serious kind of discipline. Thusly, it should continuously be on the other hand undermined with one more kind of discipline, specifically life detainment or a greatest detainment of 20 (twenty) years.

Article 99 of the new Crook Code affirms that capital punishment can be done after the President has dismissed the President's solicitation for pardon, gave that capital punishment isn't completed out in the open. Capital punishment is completed by shooting the convict to death by terminating crew or by not set in stone by regulation. The execution of capital punishment against a pregnant lady, a lady who is breastfeeding her child, or an insane individual is delayed until the lady conceives an offspring, the lady is done breastfeeding her child, or the deranged individual recuperates.

Several provisions relating to the implementation of the death penalty as stipulated in Article 100 of the new Criminal Code, include:

1. The appointed authority forces capital punishment with a probation time of 10 years considering the litigant's sensations of regret and expectation for personal development; or on the other hand the litigant's part in the wrongdoing.
2. Capital punishment with a trial period should be remembered for the court choice.
3. The 10 (ten) year trial period starts 1 (one) day after the court choice has super durable legitimate power.
4. Assuming the convict during the probation time frame shows honorable perspectives and activities, capital punishment can be changed to life detainment by Official Pronouncement subsequent to getting thought from the High Court.
5. Life imprisonment is calculated from the time the Presidential Decree is issued.
6. In the event that the convict during the probation time frame doesn't show exemplary mentalities and activities and there is no desire for development, capital punishment can be done by request of the Head legal officer.

In the event that a death row convict's solicitation for mercy is dismissed and capital punishment has not been completed for quite a long time since the exoneration was dismissed not on the grounds that the convict got away, capital punishment can be changed to life detainment by Official Pronouncement as specified in Article 101 of the new Lawbreaker Code.

5 Conclusion

1. The presence of capital punishment in Indonesian positive regulation is as yet kept up with, this should be visible from different legitimate arrangements (the Lawbreaker Code and different regulations and guidelines). Capital punishment in the new Crook Code shows that Indonesia is taking a position as a retentionist country or keeping up with capital punishment.
2. Endeavors to change criminal regulation in Indonesia should be founded on the public objectives that the Indonesian country needs to accomplish as a free and sovereign country. Guideline Number 1 of 2023 concerning the Convict Code, Articles 64 and 67 manage capital punishment as a unique discipline for specific lawbreaker acts determined in the law which is a wrongdoing that generally conveys an elective danger.

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