



Analysis of the Death Penalty Probation Period in Criminal Law Reform

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Vincentius Patria Setyawan Universitas Atma Jaya Yogyakarta vincentius.patria@uajy.ac.id	ISSN: 2808-1307 Vol. 4, No. 1, April 2024 http://jurnal.ardenjaya.com/index.php/ajsh
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Abstrak

Salah satu point pembaruan yang terdapat dalam Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana adalah berkaitan dengan jenis-jenis sanksi pidana. Pidana mati merupakan jenis sanksi pidana yang mengalami perubahan yang semula merupakan sanksi pidana pokok sebagaimana diatur dalam Pasal 10 KUHP terjemahan WvS ini. Saat ini pidana mati merupakan pidana yang dijatuhkan secara khusus dan bersifat alternatif. Berkaitan dengan regulasi pidana mati saat ini, yang menarik untuk dibahas adalah berkaitan dengan masa percobaan pidana mati selama 10 (sepuluh) tahun. Artikel ini akan menganalisis mengenai masa percobaan pidana mati dikaitkan dengan kepastian hukum. Hasil dari penelitian ini adalah penjatuhan pidana mati dengan masa percobaan merupakan jalan tengah dari pro dan kontra mengenai pidana mati, dan hal yang perlu diperbaiki dalam mekanisme masa tunggu ini adalah batas waktu untuk Presiden dan Mahkamah Agung menentukan keputusan untuk perubahan dari pidana mati ke pidana seumur hidup.

Kata Kunci: masa percobaan, pidana mati, pembaruan hukum pidana

Abstract

One of the reform points contained in Law Number 1 of 2023 concerning the Criminal Code is related to the types of criminal sanctions. The death penalty is a type of criminal sanction that has undergone changes, which was originally the main criminal sanction as regulated in Article 10 of the WvS translation of the Criminal Code. Currently the death penalty is a punishment that is imposed specifically and is an alternative. In relation to the current death penalty regulations, what is interesting to discuss is the 10 (ten) year trial period for the death penalty. This article will analyze the death penalty trial period in relation to legal certainty. The results of this research are that the imposition of the death penalty with a probationary period is a middle ground between the pros and cons regarding the death penalty, and the thing that needs to be improved in this waiting period mechanism is the time limit for the President and the Supreme Court to determine the decision to change from the death penalty to lifetime imprisonment.

Key Words: probation, death penalty, criminal law reform

A. Introduction

Law is a form of norm that contains a coercive order. As a form of norm, law regulates human behavior in order to carry out regulatory functions and aims to realize justice (Muhtadi, 2014). Apart from that, law also has a function to provide protection for society from violations of the law committed by other people. Discusses criminal law, which has sanctions that are firm, coercive and cruel. Even criminal law can take away a person's life with the death penalty.

The provision of cruel sanctions is due to the fact that criminal law has a very difficult task in protecting society from crime. The consequence of this is that criminal law should be imposed as an ultimum remedium (last resort). The death penalty can be imposed if other criminal sanctions are forced to fail to achieve the objectives of the punishment, one of which is to provide a sense of deterrence.

The current Indonesian Criminal Code is the WvS translation of the Criminal Code and is still in the transition period to use the New Criminal Code. The death penalty sanction is written in Article 10 of the Criminal Code, WvS-NI translation. The death penalty is one type of basic punishment with the most severe qualifications. Apart from the death penalty, the main penalties also consist of imprisonment, light imprisonment, fines and end-disclosed penitentiary.

The death penalty is a punishment carried out by taking the soul of a person who violates the law and who must be punished (Lon, 2020). The death penalty can be used as a means of social defense in preventing major dangers or threats that befall the community. Crimes that pose a major risk to order in social, religious and state life. In connection with this, the government has adopted a policy to maintain the validity of the death penalty for serious crimes.

The maintenance of the death penalty in criminal law in Indonesia has the potential to create new problems in terms of the sentencing process. So far, the problem after the judge knocks the gavel on the death penalty is regarding the waiting period for the death penalty. The old Indonesian Criminal Code, translated WvS-NI, did not provide regulations regarding how long the death row inmates had to wait until the time of execution arrived.

After the enactment of Law Number 1 of 2023 concerning the Criminal Code, a waiting period for the death penalty has been determined, known as the probation period. Article 100 paragraph (1) states that the death penalty is carried out after a trial period of 10 (ten) years (Rosita Roring, 2023). Apart from that, there are also changes related to the death penalty, namely that the death penalty, which was originally the main penalty, was changed to a special penalty which is punishable by alternative means.

This article will discuss the trial period in the application of death penalty sanctions in the reform of Indonesian criminal law. The discussion will be related to certainty in the criminal justice process and the achievement of the objectives of punishment.

B. Methodology

The research method used in writing this article is the normative legal research method. The normative study in this research was carried out on legal norms or rules. The legal rules in question are regulations regarding the death penalty in criminal law reform in Indonesia. This research uses a statutory approach to the provisions of the probation period in imposing the death penalty. The legal materials used in this research are primary legal materials and secondary legal materials. The technique for collecting legal materials is through literature study, and the technique for analyzing legal materials is deductive.

C. Finding and Discussion

The existence of the death penalty in Indonesia began with the existence of death penalty sanctions in the *Wetboek van Strafrecht voor Netherlandsch Indie*. The colonial legacy criminal law rules place the death penalty as a type of criminal sanction due to the colonial spirit (Anugrah & Desril, 2021). For certain criminal acts, the death penalty is imposed with the intention of subduing Indonesian society.

The opposite situation occurs in the Netherlands, which has no longer implemented the death penalty since 1870. The reason why the Netherlands no longer applies the death penalty is based on humanitarian considerations (Ludiana, 2020). Apart from that, developed countries are simultaneously talking about human rights as civilized nations.

The old Indonesian Criminal Code, translated by *Wetboek van Strafrecht for Nederlandsch Indie*, places the death penalty as one of the main crimes. Article 10 of the Criminal Code positions the death penalty as the main punishment with the heaviest criminal qualifications compared to other types of criminal sanctions. It is said to be the most severe because the death penalty is the sanction of taking a person's life.

There are differences between the original version of WvS-NI and the translated WvS-NI which has also been adjusted. The difference is that Article 11 of the WvS-NI in the original Dutch version provides regulations that the death penalty is carried out by the executioner on the gallows (the convict is hanged) (Ludiana, 2020). Meanwhile, in WvS-NI, the translation of these provisions is replaced by Presidential Decree Number 2 of 1964 concerning Procedures for Implementing Death Sentences Imposed by Courts in the General Courts and Military Courts (Kumala Dewi, 2020). The regulation states that the death penalty is carried out by being shot to death by a firing squad.

Throughout the enactment of the old Criminal Code (WvS-NI translation) there were many pros and cons related to the application of the death penalty. Pro-death penalty groups always shout about the supremacy of law, criminal law requires strict sanctions in the form of the death penalty for serious crimes. On the other hand, groups against the death penalty definitely say that the death penalty is a sadistic and inhumane sanction (Hadiyanto, 2016).

So far, from the experience of criminal law enforcement in Indonesia, the death penalty is usually only applied for serious crimes, some of which are crimes of illegal narcotics trafficking, premeditated murder and acts of terrorism (Sipayung et al., 2023). Prior to the New Criminal Code which placed the death penalty as a special alternative crime, up to now the application of the death penalty was very limited and had an ultimatum remedium character.

So far, Indonesia's commitment as a member country of the United Nation has greatly influenced the spirit of realizing the protection of human rights. International pressure to annul the death penalty has also had an influence. The Indonesian government has chosen to take a middle path, namely not abolishing the death penalty, but greatly limiting the application of the death penalty, if it is necessary the death penalty will only be implemented.

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code which was ratified on December 6th, 2022 becomes a law that replaces the Dutch East Indies Criminal Code which has been in use for approximately 104 (one hundred and four) years. 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.

With the changes and updates to Indonesian criminal law, of course it is a matter of national pride to have our own National Criminal Code, for sociological reasons to be based on the national value system that exists in Indonesia and for practical reasons. The language used is native Indonesian (Nugroho, 2019). Apart from that, the existence of the Criminal Code is a concrete manifestation of the true identity of Indonesian society and is based on Pancasila (Arfa'i et al., 2020).

Due to these reform efforts, the problem that will arise in the future is that the Criminal Code will come into force. One of them concerns the conditional death penalty law, as confirmed in Article 67 of the Criminal Code that: "Special crimes as intended in Article 64 letter c are death penalties which are always punishable alternatively."

The purpose of the death penalty can be carried out alternatively, in this case there are two possible sanctions given to the convict, namely "death penalty" or "conditional death penalty". In this case, the death penalty is no longer the main penalty, except that based on Article 99 paragraph (1) of the Criminal Code, the death penalty can be implemented after the President's request for clemency is rejected by the convict and this conditional death penalty will later be given after good behavior with a probationary period of 10 (ten) years.

Therefore, in Article 100 paragraph (1) of the Criminal Code, the panel of judges can impose the death penalty with a probationary period of 10 (ten) years if the defendant has: a. The defendant feels remorse and has hope to improve himself; or b. The role of the defendant in the crime. Due to this regret, the conditional death penalty must be included in the court decision, in accordance with paragraph (2). Furthermore, paragraph (3) explains that when a conditional death penalty decision is given with a trial period of 10 (ten) starting 1 (one) day after the court decision has permanent legal force. Furthermore, paragraph (4) is given a probationary period, then if the convict shows commendable attitudes and actions, the death penalty can be changed to life imprisonment.

With the explanation of the conditional death penalty law contained in the Criminal Code Law, when a convict is sentenced to death it is certain that someone who is sentenced will behave well, because this is in accordance with the objectives of the correctional system which provides guidance to inmates based on Pancasila. , by carrying out coaching as a form of improving the quality of inmates so that they realize their mistakes and can improve themselves better.

Therefore, the provision of conditional death penalty sanctions only focuses on non-juridical reasons, rather than juridical considerations, which should be the main reason in weighing changes to the sentence. Because criminal acts that can be given criminal sanctions are narcotics trafficking, terrorism, corruption and premeditated murder. Of course, this has a tremendous impact on the state and society. When the sentence is reduced for non-juridical reasons, it will have a negative impact on the law itself (Prasetya, 2021).

Thus, it is best that since the main examination of the case at the first court stage or other legal action stage, clear criminal sanctions have been given and provide legal certainty, whether the death penalty or life imprisonment is given. Thus, the death penalty can be carried out on the basis of accuracy and prudence. This is important so that the court does not become a legitimizer for committing murder legally. Therefore, the implementation of the death penalty must measure legal objectives that must be achieved in a balanced manner, namely justice, expediency and legal certainty.

The use of the probation period is that the defendant's progress will be seen while in the penitentiary for two things, namely whether the convict admits and regrets his actions and whether the convict has hope that he can change for the better. Thus, when this reason is used as a reference for the convict in making a decision to grant a conditional death penalty with a Presidential Decree after receiving consideration from the Supreme Court. This is to provide legal certainty in the regulation of the death penalty which is still an issue and is still a very serious debate. As explained in Article 100 paragraph (4) of the Criminal Code "If the convict during the probation period as intended in paragraph (1) shows commendable attitudes and actions, the death penalty can be changed to life imprisonment by Presidential Decree after receiving consideration from the Supreme Court."

From this article, if we examine the phrase "can", this phrase has a broad interpretation. This will provide an opportunity for the conditional death penalty which does not provide legal certainty. Because, there is no time limit for waiting for the president's decision on whether or not the sentence for the defendant can be changed. Moreover, the imposition of conditional sentences depends on a Presidential Decree. This is a problem, because the term of office of the President in granting a change in the status of the death penalty to life imprisonment is limited, which changes every 5 (five) years or 10 (ten) years if he returns to power, then when the decision is given, this is if the president changes will be a political decision and not a decision based on law

D. Conclusion

The death penalty, which is still maintained in the Indonesian criminal code, continues to have pros and cons to this day. The attitude taken by the government in reforming criminal law in the New Criminal Code is correct, by placing the death penalty as a special alternative crime. Thus, it is formally clear that the death penalty can only be applied under certain conditions, namely for crimes that are serious in nature.

In connection with the probationary period for death row inmates, careful monitoring should be carried out on the development of the convict's attitudes and behavior while undergoing sentence. The transition from the death penalty to life imprisonment must have clear legitimacy. Apart from that, it is also necessary to provide regulations regarding the maximum period for issuing a decision regarding the President's approval with the consideration of the Supreme Court.

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