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# Regulates The Death Penalty Perspective From The Purpose Of Punishment As Stipulated In The Indonesian Penal Code (KUHP)

**Lufsiana[1], Dharma Setiawan Negara[2], Samuel Dharma Putra Nainggolan[3], Jamalum Sinambela[4]**

lufsiana@hangtuah.ac.id, dharmajournal1@gmail.com, snainggolan43@gmail.com, jamsinambela@gmail.com
Hang Tuah University Surabaya
Sunan Giri University Surabaya
Faculty of Law, Airlangga University, Surabaya
Faculty of Law, Prima Indonesia University

**Abstract**

The death penalty is the most severe type of punishment imposed on a defendant. The death penalty regulations in the New Criminal Code are different from the Criminal Code which is currently still in force. This research is normative legal research using a statutory approach and a conceptual approach regarding the Death Penalty and the Purpose of Punishment itself. This research aims to analyze the death penalty regulations in the New Criminal Code which are different from the Criminal Code which is currently still in force.

**Keywords: Death Penalty, New Criminal Code, Purpose of Punishment.**

## I. Introduction

### 1.1. Background of the problem

The aim of law in general is to achieve peace and order in society. Laws are made so that the interests of different individuals, groups and countries are guaranteed and can be realized without causing harm to other parties. Therefore, a criminal law is needed to maintain this order, because criminal law is a very special law, it contains provisions regarding what actions are prohibited and accompanied by criminal sanctions for those who violate these provisions. Through criminal law, order and tranquility in society will be realized because there is legal protection in every imposition of criminal sanctions.

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A-ZAbidin believes that criminal law is a reflection of a society that reflects the values that are the basis of that society. When these values change, criminal law also changes. Criminal law is rightly called one of the most faithful mirrors of a given civilization, reflecting the fundamental values on which the latest rests.[1]Imposing a criminal sentence as a condolence to the offender is only the final remedy (ultimum remedium) which is only carried out if other efforts such as prevention are no longer working. One of the most severe forms of criminal sanctions is the death penalty, the application of which is full of debate.

The debate regarding the application of the Death Penalty is divided into 2 (two) groups who agree and those who reject it. The group that agrees with the death penalty says that the death penalty is needed to deter and frighten criminals, and relatively does not cause prolonged pain if carried out in the right way. Meanwhile, groups that oppose the death penalty say that the death penalty can cause injustice, its implementation is far from painless and is not effective as a deterrent because crimes are often committed because of hot hearts and emotions that are beyond the reach of human control.[2]

Indonesia currently has a New Criminal Code through Law Number 1 of 2023 concerning the Criminal Code (KUHP) which was passed on January 2 2023 and is effective no later than 2 (two) years after this Law is enacted, with Thus, the New Criminal Code will be effective no later than January 2 2025. The New Criminal Code, which was implemented to adapt to legal politics, conditions and developments in social, national and state life with the aim of respecting and upholding Human Rights (HAM), based on the belief in the Almighty God, a just and civilized humanity that can provide social justice for all Indonesian people.

The new Criminal Code contains national criminal law material which regulates the balance between public or state interests and individual interests, between protection

[1]Andi Hamzah, A. Sumangelipu, Death Penalty in Indonesia in the Past, Present and Future, Ghalia Indonesia, Jakarta, 1984, p. 12.
[2]Ibid

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of perpetrators of criminal acts and victims of criminal acts, between elements of actions and mental attitudes, between legal certainty and justice, between written laws that live

in society , between national values and universal values and between Human Rights and Human Obligations. The concept of criminal law reform contained in the New Criminal Code in this case supports the Functional Law Teaching (Functionele Rechtsleer) which was initiated by Roscoe Pond (1870-1964) apart from initiating "Law is a tool of social engineering", he also initiated "Law in book " and "Law in Action". It seems that in the New Criminal Code, law is not only seen from its normative side, but leads to Sociological Jurisprudence.[3]

The same opinion was conveyed by Djojodigoeno who stated as follows: "en onophoudelijk zich vernieuwend proces van normeringen door een gemeenschap, rechtstreeks of door middel van hare gezagsorganen, van de voor zakelijk verhoudingen relevante handelingen en gedragingen van here leden, dat de zin heeft order , gerechtigheid en gezamelijke welvaart te funderen en te onderhouden"[4]. This view looks at legal norms in terms of their effectiveness, how they work in the reality of legal practice. In line with the thoughts of Roscoe Pond who said "Law is a tool of social engineering", law functions as a tool to regulate people's behavior. The more society develops, the more law develops. This is indeed good enough to prove that the law is always undergoing shifts and changes in harmony with society, however, according to the author, these changes and developments must be studied appropriately, not only focused on renewal, but legal updates and changes must reflect legal certainty and justice. first before moving on to legal benefits. Don't let legal reforms as initiated in the New Criminal Code actually cause losses and threats to the wider community.

The history of the application of the Death Penalty in Indonesia which is contained in the Criminal Code which existed in the Dutch colonial era in its implementation adheres to the expression coined by Margadant "De Vermoedens, Warden Ver Dacht

[3]Sudarto, Criminal Law and Community Development (Study of Criminal Law Reform), Sinar Baru, Bandung, 1983, p. 8.
[4]Ibid, p.10.

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Makingen". The Dutch implemented the Death Penalty in Indonesia during colonialism based on reasons that were not put forward at all for consideration, with various hidden, hidden reasons and motives that smelt of colonialism and racism. Even though the

Netherlands itself had abolished the death penalty starting in 1870, and even since 1524 the death penalty had been questioned by Rombout Hogerbeets.[5]

Simonsassume that the promulgation of WvS NI, in which through the principle of concordance the death penalty was maintained in the criminal law system in Indonesia, in Memorie van Toelichting (MvT) WvS NI in 1915, was not explained in detail regarding clarity of attitude. Simons concludes that the main reason for retaining the Death Penalty is the extremely frightening nature of the Penal Code itself.[6]Simons himself actually did not agree with the preservation of the death penalty in the previous WvS NI because he himself saw the character and beliefs of indigenous people (bumiputera) as being dishonest in testifying at trials in criminal cases. If Simons considers dishonesty to be one of the characteristics of natives (Bumiputera), Kruseman in his opinion says that native people (Bumiputera) easily believe, even accepting lies as truth, according to him that many native people (Bumiputera) which is bad.

The fundamental question regarding Kruseman's statement regarding the question whether civilized Dutch people condone the Death Penalty and its types which are considered uncivilized?, in this case Kruseman expressed his disagreement by stating "Vooral om bitjuistekpolitikche redemen, zooals de om koopbaarheid en daardoor onbetrowbaarheid van de getuigen, de niet jurisdische opleiding van de Inlandsche rechters, het niet-afschrikwekkende van deze poena capitalis voor de Inlanders, diein grooten getale naar de te rechtstelling gaan kijken, als gold het cene publicke vermakelijkheid welke hun gereede stof tot glossen heft". The loose translation is "mainly for practical reasons, such as bribery and therefore unreliability of witnesses, illegal training of native judges and the non-deterent nature of these criminal penalties for

[5]Djoko Prakoso, Death Penalty Problems (Questions and Answers), Bina Literacy, Jakarta, 1987, p.1-2.

[6]Ibid, p. 3.

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Natives who went to watch executions in large numbers was a public entertainment which makes them (indigenous witnesses) polish their case material."[7]

The criminal law policy in the Netherlands in 1870 which abolished the death penalty was not followed in its colony (Indonesia), because according to the opinion of

most criminal law experts, the special situation in Indonesia required that the biggest criminals be dealt with with the death penalty. . In such a large area inhabited by heterogeneous people, police forces cannot guarantee security like in Western Europe.[8]In line with this, Lemaire is of the opinion that the designer (ontwerper) of WvS NI had a strong reason that Indonesia (the Dutch East Indies) was a colonial country that had a wide scope with a very diverse population structure (een colonial gebied van groten met uit zeeverschillende bestanddelen samen gestelde bevolking ) which essentially has a different situation from the Netherlands and the danger of disruption to legal order in Indonesia (the Dutch East Indies) is greater and more threatening than in the Netherlands and in other European countries. For this reason, weapons such as the Death Penalty have a frightening character that is not found in other types of crime, and must not be released.[9]

The application of the death penalty is a matter of debate among legal experts. The following are opinions that are pro and con against the death penalty which the author has summarized from several sources as follows:

| Views on the Death Penalty | |
|---|---|
| Pro | Counter |
| De Bussy:<br>"In Indonesia (Dutch Indies) there is a special situation. The danger of disruption to legal order is greater."[10]<br><br>Bichon van Ysselmonde: | Van Der Grinten:<br>"In principle (in commencement) the government has the right but is not obliged to impose the death penalty."[18] |

[7]Ibid
[8]HJ van Schravendijk, Textbook on Indonesian Criminal Law, Jakarta, 1956, p.224.
[9]Andi Hamzah, Sumangalipu, Op.Cit, p. 24. In WLG Lemaire, Het Wetboek van Strafrecht voor Nederlandsch Indie Vergeleken met het Ned WvS, Batavia Centrum: Noordhof Kolff, 1934, p.15-16.
[10]Ibid, p. 24.
[18]Ibid, p. 33. WPJPompe, Hanboek van Het Nederlandsch Strafrecht, Zwolle, 1959, p.306 referring to WCL van der Grinten, Rechtmatigheid van de Doodstraf, p.229

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| "I still always believe that the threat and implementation of the death penalty must exist in every state and orderly society."[11]<br><br>Jonkers:<br>"although I am of the opinion that the threat of the death penalty is limited to serious crimes, so that the threat of the Death Penalty is not only justifiable, but something that is really needed."[12]<br><br>Lombroso:<br>"The death penalty is a tool that absolutely must exist in society to eliminate individuals who cannot possibly be reformed."[13]<br><br>Hezewinkel Suringa:<br>"The death penalty is a radical cleansing tool that in every revolutionary era we can quickly use it."[14]<br><br>HG Rambonnet:<br>"The government's duty is to maintain legal order which is realized through the death penalty, because this is a logical consequence of its right to retaliate."[15]<br><br>Oemar Senoadji:<br>"As long as our country is still asserting itself, still struggling with its own life | Domella Nieuwenhuis:<br>"Regarding the provision that the death penalty is withdrawn, the death penalty can only be imposed if there is an urgent reason for immediate fear."[19]<br><br>Cesare Beccaria:<br>"The death penalty is a useless crime, which never makes people better."[20]<br><br>Van Hammel:<br>"The death penalty has lost its character as a good punishment tool."[21]<br><br>Ferri:<br>"To protect people who have a predisposition for crime, life imprisonment is sufficient, there is no need for the death penalty."[22]<br><br>Modderman:<br>"After all, you still set up zoos where wild animals are collected, which are also not impossible to escape from their shortcomings and disrupt public security. I would be more afraid if I was suddenly |

[11]Ibid Quotes Roeslan Saleh, Death Penalty Issues; Law And Society, 1960, Number 3, p. 4.
[12]Ibid, p. 27. Quoting JE Jonkers, Handboek van Het Nederlandsch Indische Strafrecht, Leiden, EJ Brill, 1946, p. 179.
[13]Ibid, p. 25.
[14]Ibid, p. 27, citing D. Hazewinkel Suringa, De Doodstraf, Tijdschrif voor Strafrecht, Deel LV, Leiden, 1947, p. 2.
[15]Ibid, p. 28, citing HG Rambonet, Het Wezen van de Straf's Hertogenbosch, Utrecht Melemberg, 1946, p. 118-119.
[19]PPC Collete, De Doodstraf in het Regeerings Ontwerp van een Wetboek van Militair Strafrecht, TvS, VIII, p. 152.
[20]Cesare Beccaria, On Crimes And Punishment and Other Writings, Cambridge Text in History of Political Thought, p.66.
[21]PAF Lamintang, Theo Lamintang, Indonesian Penitentiary Law, Sinar Graphics, Jakarta, 2010, p. 52.
[22]Ibid, p.37.

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| which is threatened by danger, as long as social order is being disrupted and endangered by elements who do not know humanity, it will still need the death penalty."[16]<br><br>De Savorin Lohman:<br>"There must be no recognition in the law that the state has the right to take the lives of criminals who do not heed zedeweti at all."[17] | caught with a wild animal like that than I would be caught with the criminals mentioned above."[23] |

### 1.2. Formulation of the problem

Fromintroduction as previously explained, this research examines the following legal issues:

1. What are the regulations regarding the Death Penalty in the New Criminal Code?;
2. Are the Death Penalty provisions in the New Criminal Code relevant to current criminal purposes?

### 1.3. Research purposes

1. To study and analyze in depth the regulations regarding the Death Penalty in the New Criminal Code;
2. To study and analyze in depth the relevance of the Death Penalty regulations in the New Criminal Code to current criminal objectives.

### 1.4. Research Type

This legal research uses the Normative Legal Type. This type of normative legal research is intended to examine the provisions of positive law, and the positive legal instruments studied normatively will be used as a source of legal material. Legal research must be carried out at the level of legal norms. Morris L Cohen who agrees with Peter Machmud Marzuki stated "Legal Research is the process of finding the law that governs

[16]Oemar Senoadji, Seminar on the Principles of National Legal Order in Criminal Law, Paper prepared by Soedarto, p. 13.
[17]Andi Hamzah, Sumangelipu, Op. Cit, p. 29. In H. Tirtaamidjadja, Principles of Criminal Law, Fasco, Jakarta, 1956, p. 124.
[23]Ibid. p.42.

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activities in human society"[24]. It seems that what was proposed by Morris L Cohen was for practical purposes. Such procedures are still needed in legal practice which determines both the impact of past events and their implications for the future. In fact, what he put forward also includes legal theory.

Another type of legal research is Doctrinal Research[25], namely research that provides or produces a systematic explanation of the legal norms (rules/principles) that regulate a particular category,[26]This legal research also functions as material for reforming the law (Reform Oriented Research), namely research to evaluate existing legal regulations and provide recommendations for changes to legal regulations that are found to be in accordance with what is desired so that they can answer legal issues raised.

### 1.5. Problem Approach

This legal research uses a statutory approach and a conceptual approach. The statutory approach (statute approach) and the conceptual approach (conceptual approach) carry out a study of all applicable legal provisions for reflection and theoretical argumentation based on basic legal concepts. Peter Mahmud Marzuki said that the approach used in the writing above included: "Statute Approach is a Legislative Approach which is carried out by examining all laws and regulations related to the legal issue being handled". Meanwhile, the Conceptual Approach is a conceptual approach based on the views of experts." It is necessary to look for Ratio Legis and the ontological basis for the birth of laws, so that researchers are able to understand the philosophical content behind the law, and conclude whether or not there is a philosophical conflict between the law

[24]Peter Machmud Marzuki, Legal Research, Kencana Prenada Media, Jakarta, 2005, p. 56.

[25]Regarding Doctrinal Research, Soetadnyo Wignyosubroto stated that Doctrinal Research is research on law that is conceptualized and developed on the basis of the doctrine adhered to by the conceptualizer or developer, including:

1. Doctrinal research that examines law conceptualized as the principle of natural law in a moral system according to natural law doctrine;
2. Doctrinal Research that examines law conceptualized as rules of Legislation according to the Positivism Doctrine;
3. Doctrinal research that examines law conceptualized as a judge's decision in concreto according to the Realism Doctrine.

In Prasetijo Rijadi, Understanding Legal Research Methods in the Context of Writing a Thesis, AL Maktabah, Surabaya, 2017, p.33.

[26]*Ibid*. P.8

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and the issue at hand.[27]Conceptual approach (Conceptual Approach), researchers will find ideas that give rise to legal understandings, legal concepts and legal principles that are relevant to the issues they face.[28]

## II. DISCUSSION

### 2.1. Mechanism for Regulating the Death Penalty in the New Criminal Code

The thing thatThe focus of discussion in this legal research is the regulation of the Death Penalty in the New Criminal Code. Previously, the regulations regarding the Death Penalty in Indonesia in 2023 still used the Dutch-made Criminal Code (Wetboek van Straftrecht voor Nederlandsch Indie/ WvS NI) Stbl. 1915 No.739 which is translated into Law Number 1 of 1946 concerning Criminal Law Regulations (KUHP). The death penalty in the Criminal Code currently in force is regulated based on Article 10 of the Criminal Code as follows:

The penalties are:

a. Principal Crime
    1. Death Penalty
    2. Prison Sentence
    3. Criminal Cage: V
    4. Criminal Fines
b. Additional Penalty
    1. Criminal revocation of certain rights
    2. Criminal confiscation of certain goods
    3. Criminal announcement of the judge's decision

In other translations of the Criminal Code, apart from using the phrase "criminal", Soesilo is more suited to using the phrase "punishment" in the form/type of punishment, in his opinion punishment is an unpleasant feeling (miserable) imposed by the judge with

[27]Prasetijo Rijadi, Ibid, p.94.
[28]*Ibid,*p.95.

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a sentence on a person who has violate criminal law.[29]According to philosophical studies regarding the purpose of punishment, it depends on various different angles as follows:[30]

1. The Theory of Retribution (Vergeldings Theorie), was initiated by E. Kant, a German who said "who kills must be killed". The purpose of punishment is as a response to crimes that have been committed in accordance with the actions.
2. The Fear Theory (Afchrikkings Theorie), was initiated by Von Feuerbach with his theory "Psychologische Zwang", that punishment must be able to scare people so that they do not do evil.
3. Correction Theory (Verbeterings Theorie), that punishment is also intended to improve people who have committed crimes.
4. The combined theory is that the basis for imposing punishment is retaliation, but the other purpose is to function as a deterrent (preventive) by scaring, maintaining the order of life together, correcting people who have done evil and must not be ignored.

Meanwhile, regarding the types/forms of criminal sanctions in the New Criminal Code, it is regulated in Article 64, Article 65, Article 66 and Article 67 as follows:

Article 64 of the Criminal Code: Crime consists of:

a. Principal Crime;
b. Additional Penalty; And
c. Special penalties for certain criminal acts specified in the law.

Article 65 of the Criminal Code:

(1). The main punishment as intended in Article 64 letter a consists of:

a. Imprisonment Sentence;
b. Cover-up Crime;
c. Criminal Supervision;
d. Criminal Fines; And
e. Social Work Crime

[29]R. Soesilo, Criminal Code (KUHP) and Complete Comments Article by Article, Politeia, Bogor, 1991, p.35.

[30]Ibid, p. 35-36.

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(2). The criminal order as intended in paragraph (1) determines the severity or lightness of the punishment

Article 66 of the Criminal Code:

(1). Additional penalties as intended in Article 64 letter b consist of:

a. Revocation of certain rights;
b. Confiscation of certain goods and/or bills;
c. Announcement of the judge's decision;
d. Payment of compensation;
e. Revocation of certain permits; And
f. Fulfillment of local customary obligations

(2). Additional punishment as intended in paragraph (1) can be imposed in the event that the imposition of the main crime alone is not sufficient to achieve the aim of the punishment;

(3). Additional penalties as intended in paragraph (1) can be imposed in 1 (one) or more types.

(4). Additional penalties for attempt and assistance are the same as additional penalties for the crime.

(5). Additional penalties for members of the Indonesian National Army who commit criminal acts in connection cases are imposed in accordance with the provisions of the laws and regulations for the Indonesian National Army.

**Article 67 of the Criminal Code:**

**The special punishment as intended in Article 64 letter c is the Death Penalty which is always threatened alternatively.**

It is stated in the two comparisons of the Criminal Code above that in relation to the type of criminal sanctions (punishment), there is a division regarding the types of criminal sanctions which are divided into 2 (two), namely main crimes and additional crimes. This division gives rise to a logical consequence in its application. Basic punishment is interpreted as a criminal sanction that is mandatory (imperative), while

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additional punishment is facultative.[31]The main punishment can stand alone and does not have to be followed by additional punishment, on the other hand, additional punishment cannot be imposed without the main punishment (which is why it is called additional punishment). Principal penalties can be imposed only if they have permanent legal force (inkracht van gewisjde).

Regarding the application of the Death Penalty which is always threatened alternatively as regulated in Article 67 of the New Criminal Code. ` An explanation regarding the application of the Death Penalty in the New Criminal Code is regulated in Article 100 of the Criminal Code as follows:

1) The judge imposed the death penalty with a probation period of 10 (ten) years taking into account:
    a. The defendant feels remorse and there is hope to improve himself; or
    b. The Defendant's Role in the Crime.
2) The death penalty with a probationary period as intended in paragraph (1) must be included in the court decision;
3) The 10 (ten) year probationary period begins 1 (one) day after the court decision becomes legally binding;
4) If the convict during the probationary 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;
5) Life Imprisonment as intended in paragraph (4) is calculated from the time the Presidential Decree is issued;
6) If the convict during the probationary period as intended in paragraph (1) does not show commendable attitudes and actions and there is no hope of improvement, the death penalty can be carried out on the order of the Attorney General.

Article 101 New Criminal Code:

[31]Chandra Khoirunnas, Study of Judges Sentencing Below the Special Minimum for Narcotics Cases Viewed from the Principles of Legal Certainty and Judge's Freedom, Thesis, Faculty of Law, Islamic University of Indonesia, Yogyakarta, 2021, p. 68-69.

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If the request for clemency for a death row convict is rejected and the death penalty has not been carried out for 10 (ten) years since the pardon was rejected not because the convict escaped, the death penalty can be changed to life imprisonment by Presidential Decree.

Observing the regulations regarding the Death Penalty as regulated in Article 100 in conjunction with Article 101 of the New Criminal Code, it can be concluded into 2 (two) things as follows: First, the Judge in handing down a Death Penalty sentence can be handed down an alternative sentence of probation for 10 (ten) years by observing regret within the defendant and hope to improve himself or the defendant's role in the crime (Main Actor/Participant/Assistance), a contrario The judge can immediately hand down a death sentence if the defendant does not show remorse and hope to improve himself, or the defendant becomes the main perpetrator in a criminal act. Second, if the Wvs NI Criminal Code (Old Criminal Code) which is currently still in force, the death penalty can be submitted for clemency to the President to be changed to life imprisonment. Regardless of whether the pardon is accepted or rejected by the President, mutatis mutandis the defendant will immediately carry it out (the final fate of the defendant is determined by the President). However, in the New Criminal Code, even if the President refuses the accused's pardon, based on Article 101 of the New Criminal Code, as long as the death penalty is not executed immediately by the Attorney General within a period of 10 (ten) years after the request for pardon is rejected, not because the convict has run away, then the death penalty This was changed to life imprisonment through a Presidential Decree. Thus, the final fate of the defendant is in the hands of the Attorney General as the holder of executive authority in criminal law.

Regulations regarding the Death Penalty as the heaviest criminal sanction in criminal law which is imposed alternatively. The purpose of punishment is confirmed in Article 51 of the New Criminal Code as follows:

1. Prevent the commission of criminal acts by enforcing legal norms for the protection and protection of society;
2. Socializing convicts by providing training and guidance so that they become good and useful people;

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3. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society; And
4. Foster a sense of remorse and relieve the convict of guilt.

Changes in the classification arrangements regarding the Death Penalty where previously in the Criminal Code, the Death Penalty was listed in Article 10 which contained the main punishment, currently in the New Criminal Code, the Death Penalty is no longer the main punishment, but as an alternative sentence, plus there is a trial penalty 10 ( ten) years for the death penalty, then this has the consequence that if the convict while undergoing probation for 10 (ten) years behaves well, then the Death Penalty that has been imposed on him will change to Life Imprisonment. The 10 (ten) year probationary period can also be said to be a "waiting period" for death row inmates before the execution is carried out. Assessment of behavior and feelings of regret are within this time period.

Probation of probation as a waiting period of 10 (ten) years is calculated from the decision of the court of first instance which decides on the Death Penalty and/or other crimes. The court of first instance as intended means that the death penalty may not be imposed by the court of first instance, but at the appeal and/or cassation level. To calculate the waiting period of 10 (ten) years, the calculation continues from the time of the decision at the court of first instance. The 10 (ten) year assessment is based on various scientific disciplines, which is considered sufficient time to assess whether or not a death row inmate has changed to become a better human being.[32]

## 2.2. The Relevance of Death Penalty Regulations in the New Criminal Code Seen from the Objectives Sentencing

Efforts to reform criminal law can be seen from socio-political, socio-philosophical, socio-cultural aspects or from various other aspects including criminal policy and law enforcement policy. Thus, criminal law reform essentially means an effort to reorient and reform criminal law in accordance with the values prevailing in society.

[32]Fauziah Rasad, Changing the Death Penalty to Imprisonment Through Alternative Sentencing, Human Rights Journal, Vol. 12, no. 1, April 2021, p.159

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Criminal law reform must be pursued through a policy-oriented approach and at the same time a values-oriented approach.

Based on Article 6 paragraph (1) of the International Convention on Civil and Political Rights (ICCPR), it is stated that "every human being has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", a person's life should be protected by law, in the Death Penalty the opposite applies, a person's life is actually lost by law. So the application of the death penalty must only be applied to very serious crimes or extraordinary crimes (extra ordinary crimes). The UN recommendation for countries that still apply the death penalty through "The Safeguards Quaranteening Protection of the Rights of Those Who Facing the Death Penalty" in 1984 is for countries that still apply the death penalty so that it is carried out with as little suffering as possible and it is necessary to consider looking for alternatives. a more humane way of carrying out the death penalty.[33]The death penalty is a crime that cannot be corrected if it is later proven that an error was found in the application of the punishment itself, therefore its use must be the final punishment in criminal law.

According to JE Sahetapy, the purpose of punishment is not to repay the perpetrator's evil actions, because after all the action has already occurred and there is no need to regret it anymore because the victim has fallen.[34]In this case, looking at the purpose of punishment, where there are various theories about this, the application of the death penalty may not be very effective, because it is possible that the perpetrator of the criminal act knew from the start that the consequences of the criminal act he committed would have an impact on him, but the perpetrator still carried it out. due to certain reasons that according to the perpetrator of the criminal act the reason for committing the criminal act is greater than the perceived benefits for the perpetrator than the consequences he will receive. For example, if there is a perpetrator of premeditated murder against someone, the death of the victim is something that the perpetrator really wants, therefore the

[33]Nandang Sambas, Application of the Death Penalty in National Criminal Law and Protection of Human Rights, Syiar Hukum Journal of Legal Studies, Vol. 9, No, 3, Bandung Islamic University, Bandung 2007, p.252.

[34]Auliah Andika Rukman, Death Penalty Viewed from a Sociological Perspective and Human Rights Enforcement, Equilibrium Journal, Vol. 4, no. 1, 2016, p. 119.

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perpetrator is satisfied with the death of the victim, so he does not feel burdened any more by whatever consequences he will receive, apart from that the Death Penalty is for the perpetrators. The perpetrator of the terrorist bombing based on certain religious reasons, he was quite satisfied with carrying out this action, the imposition of the Death Penalty would actually make the perpetrator of the crime happier. So the aim of punishment which is currently shifting towards restorative justice is not being fulfilled.

Based on Article 67 of the New Criminal Code, the death penalty is always punishable by alternative means. This means that the death penalty will always be preceded and/or followed by other types of criminal sanctions. If you want effectiveness and efficiency in punishment which will ultimately achieve the desired punishment objectives, then the form of punishment must also be studied regarding the character and nature of the perpetrator of the crime. This is because it is not uncommon for perpetrators of criminal acts to continue committing criminal acts while they are serving a sentence. For example, a narcotics dealer who was arrested and sentenced to prison, who, after being put into a correctional institution, made the correctional institution a new place for selling narcotics by selling them to other inmates (convicts). In fact, it is not uncommon for narcotics dealers who already have a wide network to still be able to carry out their illicit narcotics trafficking while the perpetrator is in a correctional institution.

EvenLikewise, if imprisonment is not applied seriously, it can lead to other crimes in the future. This is inseparable from the categorization of inmates undergoing criminal sanctions according to the type of crime they committed and the length of their sentence. It could be that convicts who have just entered a correctional institution who have been sentenced to prison for 2 (two) years will be able to interact with other inmates who are serving sentences for 10 (ten) years, or even life imprisonment. A person who commits a crime of theft is combined into one place with a person who commits a crime of murder, so that the thief will learn to be a murderer and the murderer will learn to be a thief. Correctional Institutions, which are designed as a place for someone to become good and be prepared to return to society, are the opposite, namely creating new "potential" criminals.

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## III. CLOSING

### 3.1. Conclusion

1. The death penalty in the New Criminal Code is no longer included in the Principal Crime category. Even in the Additional Criminal category, the Death Penalty is not included. In the New Criminal Code, the death penalty is a form of criminal sanction that is regulated separately, the application of which is always subject to alternative threats. This means that the death penalty has "conditions" which, if these conditions are met, the death penalty will not be imposed on the defendant. The conditions related to the alternative death penalty are imprisonment for 10 (ten) years, from this it will be assessed whether the convict has regretted his actions and has the will to become a good person or not. Apart from that, it also regulates the role of the defendant in the commission of the crime (whether the main perpetrator, or an accessory, or an accomplice).
2. The general purpose of criminal law is as a retributive mechanism for violators of criminal provisions, which also functions to distance crime from society, and to create a feeling of fear in society so that they do not commit criminal acts because the consequences that will be received are very severe. Apart from that, the purpose of punishment is also as a means of rehabilitation and restoration which is useful for repairing and treating so that the convict and the condition that has been damaged can become right again. The New Criminal Code states that punishment is not something that is used to attack human dignity. The aim of punishment in the New Criminal Code is more in the form of improvement (rehabilitation) and trying to return the situation to the state it was in before the crime was committed (restoration). The implementation of the Death Penalty in the New Criminal Code which prefers rehabilitation and restoration rather than retribution for convicts has not really been able to be realized, because the Death Penalty can still be applied in Indonesia.

### 3.2. Suggestion

1. The state must be firm in implementing the forms of criminal sanctions listed in the Criminal Code. In the Criminal Code which is currently in force, a Dutch

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derivative, the death penalty is expressly regulated as one form of punishment. The New Criminal Code which supports the spirit of restorative justice which aims to better respect human rights and humanity should eliminate the death penalty as one of the punishments. What happens in the New Criminal Code can give rise to legal uncertainty and injustice, because it will be very difficult to determine whether the death row inmate who is serving a prison sentence of 10 (ten) years has really behaved well and regrets the crime he has committed.

2. Several arrangements in the form of alternative punishments should be implemented seriously. On the one hand, reducing the number of inmates who are in correctional institutions, on the other hand, alternative punishment outside prison will better demonstrate the concept of rehabilitation and restoration for perpetrators of criminal acts because it is applied in a humane manner and directly produces real effects on both perpetrators and victims of criminal acts.

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