

Reformulation of The Death Penalty Legal Policy in The National Criminal Code Based on Pancasila Justice Values

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Abstract. *This study aims to analyze the suitability of the death penalty policy in the National Criminal Code with the values of Pancasila justice, identify weaknesses and legal problems in its regulation, and formulate an ideal death penalty policy formulation to align with just and civilized humanitarian values and social justice. This study aims to analyze the suitability of the death penalty policy in the National Criminal Code with the values of Pancasila justice, identify weaknesses and legal problems in its regulation, and formulate an ideal death penalty policy formulation to align with the values of just and civilized humanity and social justice. This study uses the Pancasila Justice Theory as the main theory combined with the theory of punishment and human rights theory in analyzing the death penalty policy in Indonesia. The research findings indicate that the death penalty policy in the National Criminal Code reflects relative conformity with the Pancasila values of justice through limitations on its application, the provision of probation, and its nature as a special and alternative punishment. Weaknesses identified include tensions with the right to life as a fundamental human right, unclear normative parameters, and potential disparities in its application. An ideal policy formulation positions the death penalty as a limited, conditional sanction, used very selectively as an ultimum remedium, while still prioritizing the principles of humanity, social justice, and a balance between protecting society and respecting human rights.*

Keywords: *Death Penalty; National Criminal Code; Pancasila Justice.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia places law as the primary foundation for the organization of national and state life. The concept of a state based on the rule of law demands that all legal policies, particularly in the field of criminal law, be formulated based on the principles of justice, humanity, and

respect for human dignity. In Hans Kelsen's view, law functions not only as a system of norms governing behavior but also as an instrument of legitimacy of state power, which must be limited by the values of justice and rationality. Therefore, the application of criminal sanctions must always be linked to the legal objectives and moral values adopted by a nation.¹

The death penalty is one of the most controversial forms of criminal sanction in modern criminal justice systems. Globally, Cesare Beccaria has long criticized the death penalty, deeming it ineffective as a means of crime prevention and contrary to humanitarian principles.² A similar view was expressed by Jeremy Bentham, who argued that punishment should provide the greatest benefit to society, making it difficult to justify punishment that deprives an individual of the right to life unless it has a significant utilitarian effect. Developments in international criminal law have shown a tendency to limit or even abolish the death penalty, as the human rights protection regime has strengthened.³

In Indonesia, debate over the death penalty is also intense. Muladi believes that the death penalty must be implemented with great care because it concerns the non-derogable right to life. Barda Nawawi Arief emphasized that sentencing policies cannot be separated from the nation's social and cultural values. Therefore, the death penalty can only be justified if it truly aligns with the objectives of sentencing and society's sense of justice.⁴ Meanwhile, Sudarto emphasized that modern criminal law should not be solely oriented towards revenge, but also towards protecting society and improving the perpetrator.⁵

The reform of the national criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code marks a significant milestone in reforming the criminal justice system in Indonesia. The National Criminal Code introduces a new paradigm by positioning the death penalty as a special and alternative punishment, and opening up the possibility of imposing the death penalty with probation. This policy reflects the state's efforts to accommodate demands for human rights protection without neglecting the importance of law enforcement for serious crimes. However, this formulation still raises questions regarding the consistency of humanitarian values and legal certainty in its application.

From the perspective of Pancasila's values of justice, the death penalty policy must reflect a balance between individual and societal interests. Satjipto

¹Hans Kelsen, (2011). *General Theory of Law and State*. New Jersey: Transaction Publishers, p. 8

²Cesare Beccaria, (1995). *On Crimes and Punishments*. Cambridge: Cambridge University Press, p. 49

³Jeremy Bentham, (2000). *An Introduction to the Principles of Morals and Legislation*. Kitchener: Batoche Books, p. 170

⁴Barda Nawawi Arief, (2018). *Criminal Law Policy: Developments in the Drafting of the New Criminal Code*. Jakarta: Kencana, p. 56

⁵Sudarto, (2013). *Criminal Law I*. Semarang: Sudarto Foundation, Faculty of Law, UNDIP, p. 89

Rahardjo emphasized that the law cannot be separated from humanitarian values and substantive justice. Good law is not merely written law, but rather law that is capable of bringing justice to social reality. This thinking is relevant to assessing whether the death penalty in the National Criminal Code truly reflects the principles of just and civilized humanity and social justice for all Indonesian people.⁶

Academic studies at Sultan Agung Islamic University (UNISSULA) also place the death penalty issue within the framework of Pancasila values and Islamic law. Several UNISSULA authors emphasize that the protection of the right to life must be understood comprehensively, taking into account the principles of public welfare and substantive justice. In this context, the death penalty is viewed as an instrument that can only be used very limitedly and must be accompanied by strict oversight mechanisms to prevent structural injustice.

This view aligns with various scholarly articles published in the *Khaira Umma Law Journal*, which consistently examines sentencing policies from the perspective of Pancasila, human rights, and national criminal law reform. Several articles in the journal highlight that the provisions on the death penalty in the National Criminal Code still require refinement, particularly in formulating clear parameters regarding the application of the death penalty as an *ultimum remedium*. This lack of clarity has the potential to lead to disparities in sentencing and undermine the principle of substantive justice.

Studies within Sultan Agung Islamic University (UNISSULA) have also made important contributions in examining the dynamics of death penalty policy from the perspective of Pancasila values of justice and Islamic law. Several UNISSULA lecturers, in a publication in the *Khaira Umma Law Journal*, emphasized that sentencing policies, including the death penalty, must be positioned within a framework of balance between human rights protection and the public interest.⁷ Research conducted by UNISSULA academics shows that the application of the death penalty in Indonesian positive law still faces conceptual problems, particularly related to the unclear indicators of the “most serious crimes” and the suboptimal integration of restorative justice values in the criminal justice system.⁸ In addition, several studies have also criticized that although the National Criminal Code has adopted a moderate approach through the concept of conditional death penalty, in practice it still has the potential to cause disparities in sentencing if it is not accompanied by clear and measurable

⁶Satjipto Rahardjo, (2009). *Law and Behavior: Good Living is the Basis for Good Law*. Jakarta: Kompas, p. 67

⁷Suteki. (2018). Reconstruction of criminal policy from the perspective of Pancasila justice. *Khaira Umma Law Journal*, 13(2), p. 215.

⁸Gunarto. (2019). Criminal formulation policy in national criminal law reform. *Khaira Umma Law Journal*, 14(1), p. 102.

guidelines for judges.⁹Therefore, UNISSULA academics are pushing for a more comprehensive reformulation of the death penalty policy, with an emphasis on strengthening humanitarian values, legal certainty, and a continuous evaluation mechanism to align with the principles of Pancasila justice and modern legal developments.¹⁰

Based on this description, it can be concluded that although the National Criminal Code has made progress in reformulating the death penalty policy, an in-depth critical review is still needed to ensure its compliance with the Pancasila values of justice. Reformulating the death penalty policy involves not only changing norms but also updating the sentencing paradigm that positions humans as dignified legal subjects. With this background, the author was motivated to conduct further academic research in the form of a thesis entitled "Reformulation of the Death Penalty Policy.

2. Research Methods

This research is a normative legal research (doctrinal legal research), namely research that aims to examine the law as a norm or rule that applies in a positive legal system. Normative legal research focuses on the analysis of legal principles, legal systematics, the level of legal synchronization, and the comparison of legal norms relevant to the problem being studied. In the context of this research, a normative approach is used to examine the provisions of the death penalty in the National Criminal Code and its conformity with the values of Pancasila justice. Normative legal research was chosen because the focus of the study is not directed at community behavior, but rather on the substance of legal regulations and the normative construction of state criminal policy.¹¹

3. Results and Discussion

3.1. The Conformity of the Death Penalty Policy in the National Criminal Code with the Values of Pancasila Justice, Especially the Values of Just and Civilized Humanity and Social Justice for All Indonesian People

The death penalty policy in the National Criminal Code essentially demonstrates the state's efforts to maintain the death penalty as an instrument of public protection, but with a more humane and limited approach. This is reflected in the provisions of Law Number 1 of 2023, which no longer positions the death penalty as an absolute principal punishment, but rather as a special punishment imposed as an alternative and accompanied by a probationary period. This

⁹Widayati. (2020). The death penalty from the perspective of human rights and Islamic law. *Khaira Umma Law Journal*, 15(3), p. 187.

¹⁰Arifin, Z. (2021). Restorative justice in the Indonesian penal system. *Khaira Umma Law Journal*, 16(2), p. 134.

¹¹Soerjono Soekanto & Sri Mamudji, (2015). *Normative Legal Research: A Brief Review*. Jakarta: RajaGrafindo Persada, p. 13.

change indicates a paradigm shift from a repressive approach to one more oriented toward humanitarian values and substantive justice.

Viewed from the perspective of the value of "Just and Civilized Humanity," the second principle of Pancasila, the death penalty policy in the National Criminal Code can be said to be relatively aligned, although not entirely without debate. Humanitarian values demand respect for human dignity, including the right to life as a fundamental right. In this context, the existence of the death penalty, in principle, has the potential to conflict with the right to life as guaranteed by the constitution and human rights instruments. However, the National Criminal Code attempts to accommodate this humanitarian value through a ten-year probationary period mechanism, which gives convicts the opportunity to improve themselves. If during this period the convict demonstrates behavioral changes, the death penalty can be commuted to life imprisonment.

This approach reflects a recognition of humanitarian values because it does not immediately eliminate the right to life, but rather allows for rehabilitation and resocialization. This aligns with modern criminal justice theory, particularly the combined and rehabilitative theory, which positions the offender as a subject with the potential for improvement. Normatively, this policy has attempted to balance the interests of law enforcement and the protection of human rights.

Furthermore, when viewed from the perspective of "Social justice for all Indonesian people," the fifth principle of Pancasila, the death penalty policy in the National Criminal Code also has relevance in the context of protecting the wider community. The death penalty remains in place for extremely serious crimes, such as crimes against life and extraordinary crimes, which have a significant impact on public order and security. The state fulfills its role as protector of the public interest by imposing strict sanctions on perpetrators of serious crimes.

Social justice, in this context, is understood not only as protection for the perpetrator, but also as protection for the victim and society. The imposition of the death penalty can be seen as a form of retributive and preventive justice, aimed at providing a deterrent effect and preventing similar crimes from occurring. Thus, this policy reflects the state's efforts to maintain a balance between individual and collective interests.

However, this conformity is not absolute. From a human rights perspective, which places the right to life as a non-derogable right, the existence of the death penalty still raises normative issues. This suggests that the death penalty policy in the National Criminal Code is a compromise between demands for public protection and respect for human rights.

This policy also meets the principle of limiting state power, as the death penalty is implemented through strict legal procedures, based on the principle of legality,

and through independent court decisions. Furthermore, the mechanism for postponing and evaluating the implementation of the death penalty demonstrates the existence of controls on the use of state power in sentencing.

The death penalty policy in the National Criminal Code has, in principle, attempted to align it with the values of justice enshrined in Pancasila, particularly the second and fifth principles, through a more humane, proportional, and limited approach. This policy reflects a balance between human rights protection and the interests of social justice. Conceptually, there remains a tension between the existence of the death penalty and the principle of the right to life, and this issue remains a topic of debate in the future development of criminal law in Indonesia.

The author's perspective from the perspective of Islamic teachings shows that the death penalty policy in the National Criminal Code, in principle, also has a meeting point with the concept of justice in Islamic criminal law (*fiqh jinayah*), especially within the framework of protection of the soul (*ḥifẓ al-nafs*) as part of the *maqāṣid al-syarī'ah*. In Islam, the death penalty is not understood solely as a form of punishment, but rather as an instrument to maintain a balance between justice, public welfare, and community protection.

This verse implies that the application of the death penalty is not intended to arbitrarily terminate life, but rather to safeguard the survival of society at large by preventing similar crimes from occurring. This perspective aligns with the preventive objectives of modern criminal justice theory.

Furthermore, the Quran also emphasizes the importance of protecting human life in Surah Al-Ma'idah, verse 32, which emphasizes the paramount importance of the right to life in Islam. Therefore, the death penalty can only be applied under very limited circumstances, with strict standards of proof, and with the primary goal of protecting human life collectively.

Based on the above description, the author argues that the death penalty policy in the National Criminal Code is relevant to Islamic legal values, particularly in terms of selective, non-absolute application, and allowing for humanitarian considerations. The probation mechanism in the National Criminal Code can be viewed as a modernization of the principle of forgiveness in Islamic law, which opens up the opportunity for changes to sentences based on the perpetrator's behavior.

From an Islamic perspective, the death penalty does not conflict with humanitarian values as long as it is applied fairly, proportionally, and as a last resort (*ultimum remedium*) to protect life and public order. This approach demonstrates the intersection of national criminal law, the Pancasila values of justice, and Islamic legal principles in achieving a balance between individual rights and societal interests.

The death penalty policy in the National Criminal Code essentially demonstrates relative alignment with the values of Pancasila justice. Just and civilized humanitarian values are reflected in the limitations on the application of the death penalty, the granting of probation, and the opportunity for commutation of sentences. Social justice is also accommodated through the function of protecting society from serious crimes. However, this alignment is not absolute, as there remains tension with the principle of the right to life as a fundamental human right. Therefore, this policy can be understood as a compromise between humanitarian demands and the need for social protection within the Indonesian criminal law system.

3.2. Weaknesses and Legal Problems in the Regulation of the Death Penalty in the National Criminal Code Reviewed from the Perspective of Pancasila Justice

The weaknesses and legal problems in the regulation of the death penalty in the National Criminal Code can be analyzed normatively by placing it within the framework of the rule of law, human rights, and the values of Pancasila justice, namely:

1. There is a legal problem in the form of tension between the recognition of the right to life as a fundamental right and the existence of the death penalty.

The right to life is a constitutionally guaranteed right and falls under the category of non-derogable rights. The provision of the death penalty in the National Criminal Code, despite being reformulated as a special and conditional sentence, continues to create normative contradictions because it essentially legitimizes the state to revoke a person's right to life. This situation demonstrates a disharmony between criminal law norms and the principles of human rights protection.

2. Legal weaknesses are also seen in the unclear parameters in the application of the ten-year probationary period for the death penalty.

Referring directly to the normative construction in the National Criminal Code, namely Law Number 1 of 2023 concerning the Criminal Code, specifically the regulation regarding the death penalty as a special punishment.

3. The death penalty is no longer the primary punishment that must be executed immediately, but rather an alternative punishment whose implementation can be postponed with a probationary period of 10 (ten) years. This provision is regulated in Article 100 of the Criminal Code, which opens the possibility of changing the death penalty to life imprisonment or 20 years' imprisonment if the convict demonstrates commendable attitudes and actions during the probationary period.

This compromise arose from the tug-of-war between the interests of social defense and the demand for respect for human rights, especially the right to life.

On the one hand, from a criminal policy perspective, the state still maintains the death penalty as an ultimum remedium instrument intended to address crimes deemed extremely serious, such as terrorism, drug trafficking, and serious crimes against life. Within this framework, the death penalty is positioned as a form of maximum protection for the legal interests of society and the state. Its existence demonstrates that the state has not completely abandoned its repressive approach to dealing with extraordinary crimes.

On the other hand, the National Criminal Code adopts a more humanistic approach by no longer placing the death penalty as the absolute principal punishment. The death penalty is changed to a special and conditional punishment, including through a 10-year probationary period mechanism as stipulated in Article 100. This demonstrates the strong influence of the development of human rights principles, especially those related to respect for the right to life as guaranteed in the 1945 Constitution of the Republic of Indonesia, particularly Article 28A.

This compromise position creates ambiguity in the direction of national criminal law policy. On the one hand, the state appears unprepared to abolish the death penalty entirely (abolitionism). On the other hand, the steps taken are actually aimed at limiting and reducing the application of the death penalty (limited retentionism). This ambiguity is evident in:

1. The death penalty is still included in the criminal justice system,
2. But along with the mechanisms of postponement, evaluation, and possible criminal conversion,
3. Without a clear roadmap towards elimination or strengthening.

Based on the above description, it can be emphasized that the provisions of the death penalty in the National Criminal Code still contain various weaknesses and significant legal problems when viewed from the perspective of Pancasila justice. These weaknesses include disharmony with the right to life as a fundamental human right, unclear norms in the application of probation that have the potential to create legal uncertainty, and inconsistencies in the application of the principles of proportionality and ultimum remedium. Furthermore, there are imperfections in reflecting just and civilized humanitarian values and social justice, particularly in terms of balancing the interests of the perpetrator, the victim, and society. This condition indicates that the death penalty policy in the National Criminal Code remains in an ambivalent position of compromise, thus implicating the less than optimal realization of Pancasila justice in the criminal justice system in Indonesia.

The author argues that the legal provisions for the death penalty in the National Criminal Code still pose fundamental problems and are not fully aligned with the values of Pancasila justice. These weaknesses are not only technically normative but also touch on the philosophical and ideological aspects of the national legal system. The disharmony between the recognition of the right to life as a non-derogable human right and the continued retention of the death penalty demonstrates the state's inconsistency in placing human rights as the primary foundation for the formation of criminal law.

The author believes that the lack of clarity regarding the parameters of "behavioral change" during the death penalty probation period is a serious weakness because it has the potential to undermine the principle of legal certainty and open up wide scope for subjectivity in law enforcement practices. This situation could ultimately give rise to substantive injustice, which contradicts the spirit of Pancasila justice, which demands justice that is not merely formal but also oriented toward humanitarian values and social justice.

Furthermore, from the perspective of just and civilized humanitarian values, the author believes that the existence of the death penalty, even though it has been limited and modified, remains difficult to fully justify because it inherently contradicts the principle of respect for human dignity. Meanwhile, from the perspective of social justice, the still-dominant retributive approach indicates that the death penalty policy has not fully accommodated the restorative justice paradigm that is more in line with the values of Pancasila.

The author also asserts that the existence of the death penalty in the National Criminal Code reflects an inconsistency in the direction of criminal law policy, particularly in the application of the principles of *ultimum remedium* and proportionality. On the one hand, the state strives to prioritize a humanistic approach, but on the other hand, it maintains the most extreme and irreparable sanctions in the event of a judicial error. This indicates that the criminal law reforms undertaken are not yet fully conceptually complete.

The author concludes that the provisions on the death penalty in the National Criminal Code remain at an ambivalent compromise between the interests of protecting society and respecting human rights. This compromise, the author believes, has not yet been able to produce a policy formulation that truly reflects the justice of Pancasila in its entirety. Therefore, going forward, more consistent, targeted legal reforms are needed, based on humanitarian values and social justice as the primary foundations of the Indonesian penal system.

3.3. Formulating an Ideal Death Penalty Policy in the National Criminal Code to Align with Pancasila Justice Values

The formulation of an ideal death penalty policy in the National Criminal Code to align with the Pancasila values of justice must be developed comprehensively by

paying attention to the balance between state power, protection of human rights, and the values of substantive justice that exist in Indonesian society.

This formulation must first and foremost be based on the principle of the rule of law, which places the law as a limit on state power in sentencing. While the state does have the authority to impose criminal sanctions, including the death penalty, this authority is not absolute. The use of the death penalty must be subject to the principles of legality, proportionality, and respect for human rights, particularly the fundamental right to life. This demonstrates that the death penalty can only be used as a last resort (*ultimum remedium*) in the penal system.

An ideal death penalty policy must also reflect the just and civilized values of humanity as embodied in the second principle of Pancasila. The death penalty must not be applied arbitrarily but must be strictly limited to the most serious crimes, such as those that threaten the life or safety of the wider community. This limitation is crucial to maintaining a balance between protecting society and respecting human dignity.

The formulation of death penalty policy must accommodate the principles of substantive justice, not just formal justice. Judges, when imposing the death penalty, must thoroughly consider aspects such as the perpetrator's background, level of culpability, motive, and the resulting impact. This approach reflects an integrative theory of sentencing that balances elements of retribution, deterrence, and correction of the perpetrator.

From a human rights perspective, the ideal formulation must also ensure strict procedures and maximum legal protection for the accused. The judicial process must be conducted in a fair trial, with guaranteed optimal defense, and open legal remedies such as appeals, cassation, and clemency. This is crucial to prevent errors in the imposition of the death penalty, which are irreversible.

From the perspective of Pancasila justice, the death penalty policy must also reflect a balance between individual and societal interests. The fifth principle of Pancasila demands social justice, meaning the state is obliged to protect society from serious crimes while still respecting the rights of perpetrators as human beings. This balance is at the heart of Pancasila justice, which avoids extremes, either in the form of absolutism in punishment or the total abolition of the death penalty.

Furthermore, an ideal death penalty policy formulation could draw on Islamic law, particularly the concept of *qisas*, which allows for forgiveness through the *diyat* mechanism. This approach aligns with restorative justice because it gives the victim or the victim's family a role in determining the resolution of the case. Integrating these values could enrich the national legal system with a more just and humane approach.

Normatively, the ideal death penalty policy in the National Criminal Code should align with a moderate model, not eliminating the death penalty altogether, but rather restricting and strictly regulating it. This model reflects a balance between the demands of protecting society, respecting human rights, and the values of Pancasila justice as the philosophical foundation of the state.

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This formulation also demands consistency between legal norms and law enforcement practices. A lack of synchronization between regulations and implementation has the potential to create disparities in sentencing, which undermines the sense of justice. Clear and measurable sentencing standards are necessary to provide judges with objective guidelines when imposing the death penalty, thus avoiding excessive subjectivity.

The formulation of an ideal death penalty policy must also consider developments in international law without losing national identity. Harmonization with global principles regarding the limitation of the death penalty is crucial as a form of respect for human dignity while simultaneously maintaining national legal sovereignty based on Pancasila. This balance

demonstrates that national law is not closed-minded, but remains selective in adopting universal values.

Policy direction also needs to emphasize transparency and accountability at every stage of the sentencing process. An open and publicly monitored process will strengthen legal legitimacy and increase public trust in the criminal justice system. This legitimacy is a crucial element in achieving substantive justice, felt not only by perpetrators and victims, but also by society at large.

Strengthening the evaluation mechanism for the implementation of the death penalty is an integral part of ideal policy formulation. Periodic evaluations allow the state to assess the effectiveness of the death penalty in achieving its sentencing objectives, both in terms of crime prevention and community protection. This approach reflects the dynamic nature of criminal law and its openness to continuous improvement.

The formulation of death penalty policy must ultimately place humans at the center of the legal system. This orientation emphasizes that the ultimate goal of criminalization is not simply punishment, but rather the creation of a balance between justice, expediency, and legal certainty. The values of Pancasila serve as an ethical foundation, ensuring that every policy adopted remains grounded in humanity, social justice, and the state's moral responsibility to its citizens.

The author's perspective emphasizes that the existence of the death penalty in the National Criminal Code cannot be understood dichotomously as maintaining or eliminating it, but rather must be placed within a rational, just, and Pancasila-oriented legal policy framework. The choice to retain the death penalty in a limited and conditional form reflects the state's non-extremist stance and demonstrates an effort to bridge the tension between demands for community protection and respect for the right to life.

The author's argument is based on the idea that Pancasila justice is not synonymous with mere retribution, but also contains a humanitarian dimension that allows for change and self-improvement. A rigid and absolute formulation of the death penalty potentially contradicts this spirit, as it precludes the possibility of rehabilitation and ignores the complexity of the factors underlying the crime. A conditional formulation is more relevant because it allows for the evaluation of the perpetrator as a dynamic human being.

The author's view also emphasizes that the effectiveness of the death penalty as a crime prevention tool cannot be the sole justification for maintaining its existence. Reality shows that serious crimes do not always correlate directly with the severity of the punishment. Criminal law policies that focus too much on repressive aspects risk ignoring the root social problems that cause crime. A more comprehensive approach through the integration of penal and non-penal policies is considered more capable of achieving sustainable justice.

The author believes that the death penalty should be positioned as the ultimate symbol of state authority, used in a very limited and cautious manner. Errors in the application of the death penalty are irreparable, so the standard of proof, the judicial process, and the judge's judgment must be held to the highest level of caution. This emphasis is crucial to maintaining the state's moral legitimacy in exercising its sentencing authority.

Another argument put forward is the importance of placing victims as an integral part of the formulation of death penalty policy. A criminal justice system that focuses solely on the perpetrator has the potential to neglect the justice needs of victims and their families. An approach that allows for victim participation, as reflected in the restorative concept and the value of *qisas* (retribution) in Islamic law, can enrich the national legal system by providing more inclusive justice.

The author also assesses that the reform of criminal law through the National Criminal Code has shown a progressive direction, but still requires strengthening in terms of implementation. Ideally formulated norms will be meaningless if not followed by law enforcement officials with integrity, professionalism, and sensitivity to the values of justice. Law enforcement is key to ensuring that the death penalty is truly implemented as a just and proportional measure of last resort.

The author's critical perspective emphasizes the importance of effective oversight of the execution of the death penalty. Transparency in the judicial process and executions must be ensured to avoid public suspicion of abuse of power. Public trust in the law can only be built if law enforcement is transparent, accountable, and based on the values of justice.

The author believes that the future direction of death penalty policy should be directed toward strengthening a more humane approach without diminishing its function of protecting society. The dynamics of international legal developments and growing awareness of human rights indicate a global trend toward restricting the death penalty. This situation demands that Indonesia continuously evaluate and adjust its policies to remain relevant to current developments without losing its identity as a nation based on Pancasila.

The ideal formulation of the death penalty policy in the National Criminal Code is a policy that places the death penalty as a special sanction that is limited, conditional, and oriented towards humanity, so that it is able to reflect a balance between protecting society, respecting human rights, and the values of Pancasila justice.

The author places the death penalty as a form of punishment that continues to generate debate between those who support it (pro) and those who oppose it (con). Those who support the death penalty argue that it is necessary to provide maximum protection for society from perpetrators of extraordinary crimes such

as terrorism, premeditated murder, and narcotics. The death penalty is seen as capable of providing a deterrent effect and reflecting the state's firmness in maintaining public order and security. Conversely, those who oppose the death penalty argue that it violates the right to life, a fundamental human right. The death penalty is also considered to have the potential to lead to irreparable sentencing errors if a court decision is made.

Based on this study, the author believes that the death penalty should be placed as a very special punishment and ultimum remedium with very limited application. The author does not completely reject the existence of the death penalty for extraordinary crimes that have a broad impact on society and the state, but its implementation must be carried out carefully, proportionally, and still pay attention to humanitarian values and human rights. In the context of national criminal law reform, the author emphasizes the importance of strengthening long-term imprisonment and life imprisonment, accompanied by an evaluation mechanism as a form of balance between community protection and respect for human dignity.

The explicitness of the concept of 20 years imprisonment and life imprisonment in this study is directed at the difference in the orientation of punishment. A 20-year prison sentence still provides hope for prisoners to return to society after undergoing rehabilitation, while a life sentence places the perpetrator in a state of loss of freedom indefinitely. The author believes that life imprisonment is still necessary for perpetrators of serious crimes who endanger society, but its implementation must be accompanied by a periodic criminal evaluation mechanism to remain in line with the goals of rehabilitation and social reintegration in the modern correctional system.

From an Islamic legal perspective, criminal punishment is essentially aimed at safeguarding the public welfare (*maqāṣid al-syarī'ah*), protecting life, religion, reason, descendants, and property. Islamic law recognizes the concept of strict punishment for serious crimes, but still leaves room for repentance, self-improvement, and forgiveness. Therefore, life imprisonment, from an Islamic legal perspective, can be justified as a form of societal protection for perpetrators of serious crimes, but its implementation must not eliminate the value of humanity and the opportunity for self-improvement of the perpetrator. This approach is in line with the Pancasila value of justice, which positions criminal law not merely as a means of retribution, but also as a means of social development and recovery.

The clarity of this concept is also relevant when linked to the Ferdy Sambo case, which captured national public attention. This case sparked debate over the appropriateness of imposing the death penalty on a premeditated murderer. Some believe the death penalty is necessary to uphold the law and ensure a sense of justice, while others believe life imprisonment is more in line with

human rights principles. This case demonstrates that the dynamics of criminal justice in Indonesia remain in a tug-of-war between repressive and humanitarian approaches. Therefore, reform of national criminal law must strike a balance between strict law enforcement, public protection, and respect for humanitarian values, in accordance with the principles of Pancasila Justice and Islamic law.

The author's perspective emphasizes that the reformulation of the death penalty policy in the National Criminal Code is not aimed at absolute abolition, but rather at restricting its application strictly, selectively, and as an ultimum remedium. The author believes that the death penalty can still be maintained in the Indonesian criminal law system for crimes that are considered very serious and threaten the safety of the wider community, such as terrorism, narcotics, and premeditated murder that have extraordinary impacts. However, the application of the death penalty must be placed as a special, alternative and conditional punishment as regulated in Law Number 1 of 2023 concerning the National Criminal Code. This approach indicates a shift in the paradigm of punishment from a retributive system to a more corrective, rehabilitative, and humane system in accordance with the values of Pancasila justice.

The author believes that the existence of the death penalty in the National Criminal Code must be accompanied by a strict evaluation mechanism through a probationary period, assessment of changes in the convict's behavior, and the possibility of converting the sentence to life imprisonment if the convict shows remorse and self-improvement. This model better reflects the balance between protecting society and respecting human rights, particularly the right to life as a fundamental right guaranteed by the constitution and the principles of just and civilized humanity.

From a modern criminal perspective, protecting society does not always require the removal of the perpetrator's right to life. The state can implement other forms of punishment that restrict certain rights or impose civil death, such as the revocation of political rights, restrictions on certain economic rights, restrictions on public office, and lifetime supervision for perpetrators of extraordinary crimes. This approach is considered more in line with the principles of just and civilized humanity because it still allows room for the perpetrator's self-improvement without neglecting the interests of protecting society. This form of punishment can be viewed as "death" in the political, social, and economic dimensions without having to physically deprive the perpetrator of his right to life. This approach is considered more in line with the development of modern criminal law, which positions punishment not solely as a means of retribution, but also as a means of community protection, rehabilitation, and social reintegration.

The author also believes that the death penalty does not need to be completely eliminated from the Indonesian legal system, as social conditions, crime rates,

and the need for public protection remain important considerations in national criminal law policy. However, its application must be strictly limited, on a case-by-case basis, and only used for truly extraordinary crimes. The state must prioritize the principles of prudence, proportionality, and substantive justice to ensure that the death penalty is not applied arbitrarily and remains in line with the values of Pancasila and respect for human rights.

The ideal formulation of the death penalty policy, according to the author, is one that positions the death penalty as a special punishment that is limited, alternative, selective, and conditional, while still allowing for evaluation, rehabilitation, and the possibility of commutation through specific legal mechanisms. This formulation reflects the character of Indonesian criminal law, which is not extreme in either maintaining the death penalty absolutely or abolishing it completely, but rather seeks to create a balance between legal certainty, benefit, community protection, and the values of Pancasila justice. Based on the values of Pancasila justice and the direction of national criminal law reform, the death penalty does not need to be completely eliminated from the Indonesian legal system. However, its application must be strictly limited, casuistic, and only used for very serious crimes. The state must prioritize evaluation mechanisms, probation, and the possibility of converting the death penalty to a more humane punishment if the convict demonstrates behavioral changes and remorse.

The author asserts that the death penalty in the National Criminal Code can still be maintained as a special, limited punishment and ultimum remedium, but its application must be selective, proportional, and oriented towards humanitarian values. The author believes that life imprisonment with a periodic evaluation mechanism better reflects the values of Pancasila Justice than the absolute application of the death penalty. Without a clear evaluation mechanism, life imprisonment has the potential to turn into a form of permanent punishment that contradicts the principle of rehabilitation in the modern correctional system. This approach is also in line with the principles of Islamic law that place punishment not only as a means of retribution, but also as an effort to maintain the public interest and open up space for self-improvement for the perpetrator.

4. Conclusion

1. The Conformity of the Death Penalty Policy in the National Criminal Code with the Values of Pancasila Justice, Especially the Values of Just and Civilized Humanity and Social Justice for All Indonesian People The death penalty policy in the National Criminal Code as regulated in Law Number 1 of 2023 in principle shows relative conformity with the values of Pancasila justice, especially the second and fifth principles, namely: a. Just and civilized humanitarian values are reflected through restrictions on the application of the death penalty, the granting of probation, and the possibility of changing the sentence to life

imprisonment as a form of respect for human dignity and opportunities for rehabilitation. b. The value of social justice is also accommodated through the function of the death penalty as an instrument for protecting society from serious crimes, thus reflecting a balance between individual interests and collective interests. This conformity is not absolute because there is still tension with the principle of the right to life as a fundamental human right, so that this policy is essentially a form of compromise between the demands of humanity, social justice, and community protection in the Indonesian criminal law system, which also has a meeting point with the principles of justice in Islamic law. 2. Weaknesses and Legal Problems in the Regulation of the Death Penalty in the National Criminal Code Reviewed from the Perspective of Pancasila Justice The provisions of the death penalty in the National Criminal Code still contain various weaknesses and legal issues when viewed from the perspective of Pancasila justice. These weaknesses are reflected in the disharmony between the existence of the death penalty and the guarantee of the right to life as a fundamental human right, the unclear norms regarding the parameters of the probation period, which have the potential to create legal uncertainty and disparity in application, and the potential violation of the principles of proportionality and *ultimum remedium* in sentencing. Furthermore, these regulations do not fully reflect just and civilized humanitarian values and social justice, particularly in balancing the interests of perpetrators, victims, and society. This situation indicates that the death penalty policy in the National Criminal Code remains in an ambivalent compromise between protecting society and respecting human rights, thus failing to fully realize the values of Pancasila justice in the Indonesian criminal law system. 3. Formulating an Ideal Death Penalty Policy in the National Criminal Code to Align with Pancasila Justice Values The formulation of an ideal death penalty policy within the National Criminal Code essentially demands a proportional balance between the state's authority to enforce the law and its obligation to protect human rights. The death penalty is no longer viewed as an absolute instrument of punishment, but rather as an extraordinary sanction applied selectively, cautiously, and under certain conditions, with strict and accountable mechanisms. This approach reflects the Pancasila values of justice, which place humanity, social justice, and community protection as an inseparable whole, so that the penal system is oriented not only toward retribution but also toward fostering, restoring, and balancing the interests of all parties in society.

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