

## THE DEATH PENALTY IN THE DRAFT CRIMINAL CODE (RKUHP): WHAT ARE THE REGULATIONS AND MECHANISMS?

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**Abstract:** This article aims to explain the discussion of the death penalty in the draft criminal code (RKUHP) with a review from the point of regulation and mechanism of its application. This research uses a normative juridical approach method to facilitate step by step in describing the discussion. After research, it can be concluded that the RKUHP regulates the death penalty as a special punishment which is always threatened alternatively with other types of punishment, namely life imprisonment or a maximum of 20 (twenty) years in prison. In addition, crimes are regulated in the Criminal Code (KUHP) and other special laws. When referring to the purpose of punishment described in the RKUHP, there is a distinction between the goal to be achieved and the method used. Some of the objectives of sentencing are not achieved by applying the death penalty. The use of the death penalty cannot contribute to the socialization of convicts and the settlement of conflicts caused by criminal acts. Considering that imprisonment as an alternative to death penalty has a negative impact on convicts, it is necessary to develop other alternatives. This alternative not only fulfills the purpose of punishment stipulated in the KUHP, but also becomes an alternative that is not detrimental to the convict.

**Keywords:** Death Penalty; RKUHP; Special Punishment.

### 1. Introduction

Indonesia is a country that prioritizes the equality of all citizens in intergroup interaction. An example is the value of harmony. The value of harmony is an unambiguous statement and indicates the existence of a strong relationship between stand-alone components. "Harmony indicates the existence of a reciprocal-based network. That is, persistently accepting, acknowledging, and respecting the behavior of others."<sup>1</sup> Harmony comes from the word "get along",<sup>2</sup> which means "healthy and attractive, doesn't clash, and "solid in everyday life."<sup>3</sup> It can be said that

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<sup>1</sup> Ibnu Rusydi and Siti Zolehah, "Makna Kerukunan Antar Umat Beragama Dalam Konteks Keislaman Dan Keindonesian," *Al-Afkar, Journal For Islamic Studies*, 2018, 170–81.

<sup>2</sup> Li-ann Thio, "Rule of Law, Religious Liberty, and Harmony: Multiculturalism, Legal Pluralism, and the Singapore Model of Accommodative Secularism," *Journal of Law, Religion and State* 5, no. 3 (2017): 254–91.

<sup>3</sup> Imam Syaukani, "Kompilasi Kebijakan Dan Peraturan Perundang-Undangan Kerukunan Umat Beragama," *Jakarta: Puslitbang*, 2008.

harmony is “the process of getting along well.”<sup>4</sup> From the deepest heart, harmony is “present to provide a sense of tranquility to create social interaction without pressure from any party.”<sup>5</sup>

In Indonesia, the pros and cons of the death penalty are also still a polemic. The last time was the pros and cons of the President's rejection of clemency proposed by death row inmates, drugs, and the execution of his crime. The pros consider that in drug cases and other cases that fall into the category of extraordinary crimes, the state needs to apply severe crimes, such as the death penalty. For example, such as drug trafficking crimes that are already at an alarming stage, so the state is obliged to protect the public. For those who are pro, in addition to causing a deterrent effect, the death penalty also prevents the recurrence of the same crime. The application of this crime is also considered not contrary to the constitution if it is done for reasons that are not contrary to the law. However, “pro-death penalty parties also emphasize the need to improve the legal system, starting from the level of investigation to prosecution.”<sup>6</sup>

In various regions in Indonesia, several factors that trigger conflict and crime are the weak condition of law enforcement officials. Coupled with laws and regulations that have many pros and cons from the community. As well as the “practice of discrimination and marginalization in everyday life in the social, economic, political, religious, and other fields. This results in the emergence of continuous injustice and discontent, which then escalates into conflict between people.”<sup>7</sup>

The RKUHP regulates the death penalty in the form of certain sentences which are always threatened in a substitute way with other types of punishment is life or for a maximum of 20 (twenty) years imprisonment. The RKUHP has stipulated that the Judge can impose the death penalty with probation for 10 (ten) years by looking at the following: “the defendant's sense of remorse and there is hope for improvement; the defendant's role in criminal action; or there are mitigating reasons (Article 100 Paragraph 1).”<sup>8</sup> But, the arrangement or articulation of the death penalty as a specific punishment is also less argumentative, because it isn't much different from the current provisions of the death penalty. Not only that, crimes are regulated in the KUHP as well as certain other laws. If you take into account the purpose of punishment listed in the RKUHP, there is a relationship between the goal to be achieved and the method used. Some of the goals of punishment don't succeed by practicing the death penalty. The use of death rewards cannot contribute to the socialization of prisoners and the handling of clashes caused by crimes. Given that imprisonment as a substitute for death rewards has negative consequences for prisoners, it needs to be developed by other substitutes.

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<sup>4</sup> Said Agil Husain Al Munawar and Abdul Halim, “Fikih Hubungan Antar Agama,” *Cet. III*, 2005.

<sup>5</sup> Faisal Ismail, *Dinamika Kerukunan Antarumat Beragama: Konflik, Rekonsiliasi, Dan Harmoni* (PT Remaja Rosdakarya, 2014).

<sup>6</sup> Lidya Suryani Widayati, “Pidana Mati Dalam R UU KUH: Perlukah Diatur Sebagai Pidana Yang Bersifat Khusus?(Death Penalty In The Bill Of Criminal Code: Should Regulated As A Special Punishment?),” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 7, no. 2 (2017): 167–194.

<sup>7</sup> H Zainuddin Ali, *Sosiologi Hukum* (Sinar Grafika, 2023).

<sup>8</sup> Supriyadi Widodo Eddyono et al., *Hukuman Mati Dalam R KUHP: Jalan Tengah Yang Meragukan* (Institute for Criminal Justice Reform, 2015).

This substitute not only fulfills the purpose of punishment stipulated in the KUHP, but also becomes a substitute that isn't harmful to prisoners.

Historically, the death penalty is one type of sanction that has existed since it was safe a long time ago and was applied in the world, especially the Middle Ages. The death penalty was used for various types of offenses that had been proven and committed by a person, but at that time it was not specific to a particular crime. There are various ways of implementing the death penalty according to the development of society. The execution of the death penalty includes burning, beheading, hanging, shooting, being put in gas chambers, electric chairs, and etc. The death penalty raises pros and cons in its implementation. This is because the death penalty is cruel, the most severe and suffering for the perpetrators. "The application of the death penalty is something gripping experienced by criminal offenders, moving for those around them that actually do not have to be done throughout the ages. On the one hand it is moving, but on the other hand the suffering of the death penalty becomes a happy thing for those with conscience."<sup>9</sup>

The conflict between the pro-death penalty group and the counter-death penalty group and the process to carry out death penalty executions that require a very long time and even drag on in uncertainty when death penalty executions can be carried out is a problem that must be resolved comprehensively. The resolution of the death penalty problem in Indonesia can be started by formulating a death penalty policy in Indonesia. It is now seen that crimes threatened with the death penalty such as terrorism, corruption, narcotics and sexual crimes against children are "massive" and increasingly widespread as if they do not recognize differences in age and place, in other words, "these crimes Its occurrence is not only in big cities, but has spread widely to all levels of society both in urban and rural areas. Because of this, there are demands that the perpetrators be sentenced to severe crimes including the death penalty to cause a deterrent effect."<sup>10</sup>

People who oppose the death penalty consider that the crime is inhumane and contrary to the principles of just and civilized humanity, such as those in Pancasila. One of the controversies regarding the death penalty arose because of the second amendment to Articles 28A and 28I Paragraph 1 of the 1945 Constitution which states everyone has the right to live and has the right to defend his life and life. This right is a human right (HAM) that cannot be reduced under any circumstances and by anyone, including the state. In addition, the death penalty is considered incompatible with the purpose of punishment, which is to deter people from committing crimes, and not revenge. "The death penalty is considered unable to eliminate crime in society and create a happy society. The deciding factor is not how much crime goes down with the death penalty, but how justice persists and is felt by victims of crime."<sup>11</sup>

People who agree with the death penalty consider that this crime deserves to be imposed on sadistic criminals because if it is not done it is feared that the action will

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<sup>9</sup> Tia Ludiana, "Eksistensi Pidana Mati Dalam Pembaharuan Hukum Pidana (Kajian Terhadap Pidana Mati Dalam RUU KUHP)," *LITIGASI* 21, no. 1 (2020): 60–79.

<sup>10</sup> Roby Anugrah and Raja Desril, "Kebijakan Formulasi Pidana Mati Dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 80–95.

<sup>11</sup> Tina Asmarawati, "Hukuman Mati Dan Permasalahannya Di Indonesia," *Yogyakarta: Deepublish*, 2013.

be repeated. This punishment is considered in accordance with the purpose of criminal law in general, which is to prevent crime and protect individual interests. The death penalty is considered to have a deterrent effect on society. The death penalty is an exception to the right to life that is still recognized in many countries. This punishment is the most severe sanction for perpetrators of crimes that severely violate the human rights of others. In accordance with Article 28 of the 1945 Constitution which states that everyone is obliged to respect the human rights of others. In addition, in exercising their rights and freedoms, everyone must comply with the law so as not to violate the rights and freedoms of others. The Law Number 39 of 1999 concerning Human Rights also states that the restriction of one's human rights with the rights of others for the creation of public order. In this way, "the death penalty can create respect and respect for the human rights of others"<sup>12</sup>

The policy of implementing a type of criminal sanction is not necessarily the beginning of a strategic plan. An important stage of criminal politics is deciding which goals to achieve. "The purpose of the punishment set can be a reference to ascertain the method, tool, or action to be used."<sup>13</sup> The wisdom of deciding what punishment is best for achieving the goal, at least close to the goal, is not free from the problem of determining various substitutes. Determining various substitutes to get which punishment is considered very appropriate, very good, or very efficient, is not an easy matter. From a political perspective, the crime cannot be solved, it can even be caused by the improper type of punishment that is formalized. Therefore, based on the background above, the author would like to explain about the death penalty in RKUHP, along with its regulations and mechanisms.

## 2. Method

This research uses a normative juridical approach method. "The meaning of this approach is a study that is emphasized to study positive legal norms or rules."<sup>14</sup> In the opinion of Peter Mahmud Marzuki, explained that "normative legal research or literature is an effort aimed at finding doctrines, principles and legal rules to answer legal problems that are happening."<sup>15</sup> This method is used with the aim of examining legal objectives, legal sources, legal rules and legal norms relevant to the discussion of the death penalty RKUHP. Using the normative juridical approach method, the author tries to elaborate the main aspects in research such as the regulation of the death penalty in the RKUHP and the mechanism of its application. This research is a qualitative type based on literature. This type of research is supported by 3 types of legal materials including primary, secondary, and tertiary.

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<sup>12</sup> Asmarawati.

<sup>13</sup> Mei Susanto and Ajie Ramdan, "Kebijakan Moderasi Pidana Mati," *Jurnal Yudisial* 10, no. 2 (2017): 193–215.

<sup>14</sup> Joanedi Effendi and Johny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Prenada Media, 2018).

<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, ed. PRENADAMEDIA GROUP, Edesi Revi (Jakarta, 2016).

### 3. Discussion

#### 3.1. Death Penalty Regulation in the Draft Criminal Code (RKUHP)

The death penalty is a sanction carried out by taking the choice of deadly actions to perpetrators of criminal acts that have been determined guilty of a court decision with permanent legal force. This criminal sanction has been known since the Dutch colonial period, precisely when the Governor-General of the Dutch East Indies, Henry Willem Daendels came to power in Indonesia in 1808 AD. Usually, this death penalty was given to natives who did not want to be used as an errand or did not obey Daendels' orders. This sanction is also unique because after the execution is carried out, the convict who has lost his life cannot live again. This is one of the reasons many parties reject the death penalty. The death penalty in the KUHP is known as the main type of criminal sanction with the first order (this order means the arrangement based on the severity of the criminal sanction), while the death penalty arrangement in the RKUHP is no longer as the main type of crime but only as an alternative crime for certain crimes specified in the law. This arrangement is contained in Article 98 of the RKUHP which states that this crime is a last resort to protect the community. Here is a comparison table between the death penalty arrangements of the two rules:

**Table 1.** Types of Criminal Sanctions in the KUHP and RKUHP<sup>16</sup>

Types of Criminal Sanctions in the KUHP		
Principal Crime (Article 10)	Additional Crime (Article 10)	
1. Death penalty	1. Deprivation of certain rights	
2. Imprisonment	2. Confiscation of certain objects	
3. Criminal confinement	3. Announcement of the judge's ruling	
4. Criminal fines		
5. Criminal cover-up		
Types of Criminal Sanctions in the RKUHP		
Principal Crime (Article 65)	Additional Crime (Article 66)	Crimes of a special nature for certain crimes specified in the Law (Article 67)
a. Imprisonment	a. Revocation of certain rights	The death penalty which is always threatened alternatively (Article 98-102)
b. Criminal cover-up	b. Seizure of certain goods	
c. Criminal surveillance	c. Announcement of the judge's verdict	
d. Criminal fines	d. Payment of indemnity	
e. Criminal social work	e. Revocation of certain permissions	
	f. Fulfillment of local customary obligations	

<sup>16</sup> Puguh Wiyono, "Hukuman Mati Dalam Rancangan KUHP," Kemenkumham Sulawesi Selatan, 2022, [https://sulsel.kemenkumham.go.id/attachments/article/8014/hukuman\\_mati\\_dalam\\_Rancangan\\_KUHP.pdf](https://sulsel.kemenkumham.go.id/attachments/article/8014/hukuman_mati_dalam_Rancangan_KUHP.pdf).

The issuance of the death penalty from the main crime and becoming an alternative (exceptional) special crime according to Barda Nawawi, a member of the RKUHP Drafting Team is based on 3 (three) main thoughts as follows:

1. "Judging from the purpose of punishment, the death penalty is not the main or principal means of regulating, ordering, and improving individuals or society. The death penalty is only a means of exception. So, the death penalty is likened to a means of amputation or surgery in the field of medicine whose right is also not the main medicine but only the last medicine;
2. The concept of the death penalty as a special crime departs from the idea of monodualistic equilibrium. This idea is oriented towards balancing the public interest or protection of society and also takes into account the interests or protection of individuals. That is, in addition to protecting the death penalty community, it also pays attention to individual interests, such as provisions for postponing the implementation of the death penalty for pregnant women and mentally ill people (Article 81 Paragraph (3)). Another example is the possibility of postponing the execution of the death penalty, otherwise known as the "conditional death penalty" with a probation period of 10 years (Article 82 Paragraph (1));
3. The defense of the death penalty, although as a special crime, is also based on the idea of avoiding prosecution or public reaction that is revenge or extra-legal execution. This means that the provision of the death penalty in the Law is intended to avoid public emotions."<sup>17</sup>

The implementation of the death penalty in the RKUHP is carried out through several stages. The first stage, as far as possible, the death penalty is avoided by choosing an alternative crime in the form of life imprisonment or imprisonment for a certain time, a maximum of 20 years. The second stage allows the postponement of the death penalty with a probation period of 10 years. In the postponement of the death penalty, it is possible to change the death penalty to life imprisonment or imprisonment for a maximum of 20 years. In the third stage, the convict has the right to apply for clemency. Meanwhile, the death penalty itself was only carried out after the clemency request was rejected by the President. "If clemency is denied and the death penalty is not carried out for 10 years, the death penalty can be changed to life imprisonment."<sup>18</sup>

Indonesia as a state of law that adheres to the ideology of Pancasila, explained by Barda Nawawi regarding "the death penalty that Pancasila adheres to the balancing value between one precept and another."<sup>19</sup> But, if Pancasila is observed in a partial way, it is emphasized on one of the precepts, so there are some who argue that the death penalty is contrary to Pancasila but there are also those who support

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<sup>17</sup> Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana:(Perkembangan Penyusunan Konsep KUHP Baru)," 2011.

<sup>18</sup> Puguh Wiyono, "Hukuman Mati."

<sup>19</sup> Teguh Syuhada Lubis, "Reformulasi Hukum Penanganan Tindak Pidana Kekerasan Di Lingkungan Pendidikan Dalam Upaya Perlindungan Profesi Guru," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 191-207.



it. “When viewed in terms of purpose, the death penalty is not an important purpose for organizing, fixing and justifying citizens. But the death penalty is the last tool or exception.”<sup>20</sup> For this reason, the presence of the death penalty in the RKUHP must always be based on Pancasila as the basis of the state which determines the direction of the development of the Indonesian state.

The imposition of the death penalty is used as a tool of criminal politics. The death penalty is used as a way and a last resort to protect society. The enforcement of criminal law must be tried more carefully, thoroughly, effectively, carefully and limitatively to see criminal punishment as a policy. According to Nigel Walker, there are several restrictive conditions in the imposition of criminal law, namely:

1. “Don't just use punishment to respond to anger;
2. Don't use punishment to punish actions that are not right, harmful or harmful;
3. Refrain from using punishment to achieve a goal that can be achieved more efficiently with other, easier methods;
4. Don't use penalties if the harm and threat are greater than the loss or threat of the act or commission of the crime itself;
5. The taboos listed in the punishment shalln't be greater than the attempted action;
6. Punishment should not contain taboos that don't find great support from society.”<sup>21</sup>

From the explanation above, it can be concluded that the policy of overcoming deviations in this matter is that the death penalty is recommended to be carried out with an integral wisdom approach, either by using penal or non-penal tools, either by carrying out training or treatment of prisoners. Factors that cause a person to commit a crime are factors of socio-economic inequality, unemployment, ignorance, poverty, racial and social discrimination, factors of family problems and so on. The function of punishment is not only to account for and nurture perpetrators from crimes, but also to account and build to avoid other parties who in a systemic and functional way have the ability to carry out punitive crimes, also useful for correcting or changing the impacts or losses that arise on victims. That way, comprehensive discretion in crime solving means that the policy of a comprehensive correctional system is the integration between the individual correctional system and the structural/ functional correctional system, including the application of the death penalty through community formation and healing.

From the perspective of legal politics, the concept of criminal policy is relevant to the moderate defense of the death penalty. “This is because the Indonesian National Law policy is a product of national legal creation, and has a special purpose to create a comprehensive national legal system in Pancasila and the 1945 Constitution of the Republic of Indonesia.”<sup>22</sup> Legal politics must work in accordance

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<sup>20</sup> Romli Atmasasmita, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan* (Gramedia Pustaka Utama, 2017).

<sup>21</sup> S H Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Prenada Media, 2018).

<sup>22</sup> Arif Hidayat and Zaenal Arifin, “Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia,” *Jurnal Ius Constituendum* 4, no. 2 (2019): 147–59.

with the goals of the country, the wishes of the nation, the wishes of the law and the rules of instructors stated in the 1945 Constitution of the Republic of Indonesia. Bagir Manandivides legal politics into 2 is fixed and changing. It is said that the politics of law permanen because legal positions will always be the basis of politics, among others:

1. “There is a unified national legal system;
2. There is no law that distributes exclusive rights to the people of a particular country based on race, ethnicity or religion, if there is also a comparison based solely on national needs in the chart of unity and national alliances;
3. The national legal system was formed based on and to strengthen the joints of Pancasila and the 1945 Constitution of the Republic of Indonesia;
4. Lawmaking that observes the heterogeneity of citizens;
5. Customary law and other non-recorded legal rules are considered complementary principles of the national legal code throughout daily life and are upheld by the general public;
6. Laws are based and upheld for the sake of human rights;
7. While temporary legal politics was inaugurated from time to time the same as the wishes, the illustration of the priority of making laws and regulations, the elimination of remnants of colonial legislation and so on.”<sup>23</sup>

Looking at the legal aspect, “the death penalty policy in the RKUHP is said to haven’t changed with permanent and temporary legal politics.”<sup>24</sup> Because when looking at the politics of early face law, the death penalty in the RKUHP is an inseparable part of the Indonesian legal system to see the precepts of Pancasila and the 1945 NKRI Constitution. Second, the death penalty policy is part of state administration based on law and constitution, considering that the Constitutional Court has issued decision no 2-3/PUU-V/2007 which aims to bring order to the death penalty policy. Third, the death penalty examines the heterogeneity of citizens, for example looking at the diversity of races, customs, religions, customs and methods of vision of Indonesian citizens. Basedon this explanation, the author tries to describe a straight line that unites the three points. In essence, the death penalty is an effort to prevent serious crimes. Of course, this policy is not decided by the government directly, but still through consideration mechanisms such as Pancasila, constitutional court decisions, to aspects of ethnicity, religion and tradition. So that this verdict can be an alternative punishment as a lesson for someone who wants to commit a serious crime that can have a deterrent effect.

### **3.2. Death Penalty Punishment Mechanism in the Draft Criminal Code (RKUHP)**

The imposition of the death penalty according to Tarde is “recognized for the crime of murder only. Death as a result of murder is unnatural, and everything unnatural must eventually be abandoned, regardless of strong utilitarian

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<sup>23</sup> Bagir Manan, “Politik Perundang-Undangan,” *Penataran Dosen FH/STH PTS Se-Indonesia. Bogor: Makalah*, 1993.

<sup>24</sup> Tobias Smith and Daniel Pascoe, “Suspended Execution beyond China’s Borders,” *Asian Journal of Law and Society* 9, no. 1 (2022): 133–167.



arguments.”<sup>25</sup> Instead of the guillotine, there should be terrible corporal punishment; Let the convicted person choose how he dies, and let's see if anticipation of serious crimes becomes more humane. Wherever there is no death penalty, it becomes mere intimidation or just an example.

Although the death penalty has long been a topic of discussion in Indonesia, the death penalty will still be used as an alternative in the RKUHP in the coming years. According to those who support the use of the death penalty, it is widely accepted that weapons are used in Indonesia particularly to combat human trafficking and the general public and relatives of victims should have access to life for life. Meanwhile, according to the counterparties who think that the death penalty is considered related to the defense of human dignity, death row prisoners are not human beings. In addition, death row criminals contain the belief that there are certain erroneous court rulings that cannot be beneficial if the death row inmate is already dead.

If we review the procedures for implementing the death penalty above, step by step there is a very careful attitude of the executor in carrying out his duties. This can be seen from the target of the firing squad is the heart of the convict. The determination of the heart as a shooting target is intended so that after the bullet hits the heart of the convict, the death row is directly inmate. The procedure for carrying out the death penalty through being shot to death by targeting the convict's heart is actually the most effective and humane way to take lives. It is unlikely that a convict who was shot dead in the heart is still alive. Therefore, this procedure can be considered not to violate the 1945 Constitution, because convicts are not tortured first and then die. In special conditions, “where the shot turns out to be missed or with one shot hitting the heart it turns out that the convict still shows signs of life, Law No. 2/PNPS/1964 has provided regulations.”<sup>26</sup>

In maintaining the death penalty as a substitute punishment applied by caution to specific punishments such as murder and the existence of arrangements for the death penalty determined by the legal tribunal shows that there are still problems. The application of the death penalty as a specific crime as well as a substitute is a compromise that is very beneficial for both parties in this action. Because some crimes are punishable by death, certain to serious crimes, namely murder. While on the other hand there is an understanding that the death penalty is a very severe punishment and cannot be corrected if it has been decided by a judge and has permanent legal force.

The death penalty for the Constitutional Court of the Republic of Indonesia does not contradict the right to life ensured in the 1945 Constitution of the Republic of Indonesia, because the 1945 Constitution of the Republic of Indonesia does not adhere to the absolute principle of human rights. According to the Constitutional Court, the basic rights granted to citizens from Article 28A to Article 28I of Chapter XAUUD 1945 are contrasted with the next article which is key namely Article 28J which states that the personal responsibility of a person must be upheld while the responsibility of others must be enforced in accordance with laws and social norms.

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<sup>25</sup> Piers Beirne, “On Gabriel Tarde, Penal Philosophy,” in *Classic Writings in Law and Society* (Routledge, 2017), 21–29.

<sup>26</sup> Gina Olivia, “Perbandingan Pelaksanaan Pidana Mati Berdasarkan Kuhp Dan Peraturan Perundang-Undangan Indonesia Dan China,” *Varia Hukum* 3, no. 1 (2021): 21–36.

The judge's view in determining the death penalty is essentially to defend the basic rights of people to victims taken by the accused.

In the RKUHP Article 53 paragraphs (1) and (2) emphasize that in examining a crime problem, judges must prioritize law and equality, if in prioritizing law and equality there is an antagonism between legal clarity and equality, judges must prioritize equality. For example, related to the case of one of the two-star Police Generals, Ferdy Sambo, who was sentenced to death. The former head of the National Police Propam Section was found guilty of the premeditated massacre of Novriansyah Yosua Hutabarat. A panel of judges in the South Jakarta District Court ruled that Ferdy Sambo was proven to have planned to kill Novriansyah Yosua Hutabarat. The intentional factor was known when Ferdy Sambo planned to ask for help from others to carry out his actions. Then Ferdy Sambo has also thought about the method of carrying out the massacre, the suspect still has the option of equipment used. One of the other evidences is also when Ferdy Sambo asked his assistant Ricky Rizal to kill Joshua. But because it was rejected by Ricky Rizal, the order fell to Richard Eliezer with the rank of Bharada. Looking at the collection of evidence at trial, the judge believed that there was an element of "intentionality". Based on the facts at trial, it is clear that defendant Ferdy Sambo shot Joshua Hutabarat with a Glock-type firearm. Instead, the suspect was wearing dark gloves.

Murder is an intentional attempt to kill another person in a series that threatens the life of another person until that person dies. This can also be shortened by premeditated murder which is the highest level in murder cases. This is contained in Article 340 of the KUHP as follows: *"Whoever willfully and premeditatedly takes the life of another shall be punished with wrongful premeditated murder, with the death penalty or imprisonment for life or temporary imprisonment for not more than twenty years."*<sup>27</sup>

In a verdict in court, there are 3 meaningful aspects that need to be observed are the defendant, the victim, and also the community. In Ferdy Sambo's case, the judge clearly considered that the actions committed were serious crimes. In the RKUHP Article 58 paragraph (1) concerning factors that aggravate the crime, among others, are "officials who carry out criminal acts so as to violate certain office obligations or carry out criminal acts by abusing the power, opportunity, or means given to him because of position." Looking at the sound of this article, it is clear that what aggravates the sentence of Ferdy Sambo to the death penalty is his position at the time of committing the crime, namely the Head of the Police Propam Division, he is considered to have abused the authority, opportunities and tools handed over to him to carry out the crime and tried to cover up the crime.

In imposing the death penalty is not directly carried out. There are through several legal remedies that can be taken by suspects, including:

1. Resistance or Verzet is a legal opinion given to a group of jurists without any doubt (verstek). According to the current situation, this law is offered to affected parties. For the claimant, this stage of verstek can apply an appeal.

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<sup>27</sup> Keren Shallom Jeremiah and Karina Hasiyanni Manurung, "Analisis Perbuatan Obstruction Of Justice Yang Dilakukan Oleh Aparat Kepolisian Dalam Perkara Pembunuhan Berencana," *Jurnal Esensi Hukum* 4, no. 2 (2022): 99–111.

2. An appeal is the submission of a matter to a larger legal tribunal for re-examination, if the parties are not satisfied with the original level setting. Based on the provisions formalized in Law No. 20 of 1947 concerning retrial, as well as those provided for in Articles 7 to 15. Claimed between the duration of the appeal; 14 days from the time the judgment is pronounced, if the duration of the judgment pronounced by the Appellant appears in person at the hearing, 14 days from the time the decision is notified, if the Appellant does not appear when the decree is pronounced at the hearing, if the matter of prodeo, is limited to 14 days from coinciding with the notice of the prodeo determination from the Major Law Panel on the Appellant. The filing of the appeal is informed to the Registrar of the legal tribunal that decides the matter at the initial level.
3. Cassation is a cassation level check, not a third-level legal assembly. Its authority to examine and examine problems does not cover all problems, is of a very limited character, and only covers the conditions stipulated in Article 30 of Law Number 14 of 1985.

If the prisoner during the 10-year experimental era proves good deeds and actions, the death penalty can be replaced with a life imprisonment by the Decree of the Head of State after obtaining the evaluation of the Supreme Court. If the opposite happens during the 10-year probation period, the death penalty can be carried out by order of the Attorney General. Meanwhile, if the president's request for clemency is rejected, the death penalty is carried out publicly. This is done by shooting the convict. Or it can be done in any other way required by law. The use of death rewards by shooting prisoners is based on aspects that are considered more humane. But in the future there are other events that are more humane than shooting, then the execution of death row prisoners will be adjusted according to these developments.

#### **4. Conclusion**

Based on the explanation above, it can be concluded that death penalty is a sanction that has been regulated by law to then be realized with a choice of deadly acts to perpetrators of criminal acts who have been convicted by a court decision with permanent legal force. The death penalty in the RKUHP in its implementation is usually carried out by means of execution by a predetermined firing squad. Then the mechanism for implementing the death penalty above, step by step is very clear the careful attitude of the executor in carrying out his duties. This can be seen from the target of the firing squad is the heart of the convict. The application of the death penalty as a specific crime as well as a substitute is a compromise that greatly benefits both parties in the action. Since some crimes are punishable by death, it must be a serious crime of murder. The use of the death penalty cannot contribute to the socialization of convicts and the resolution of conflicts resulting from criminal acts. Given that imprisonment as an alternative to the death penalty has a negative impact on convicts, it is necessary to develop other alternatives. This alternative not only fulfills the penal objectives stipulated in the KUHP, but also becomes an alternative that does not harm the convict.

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