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The Existence of the Death Penalty After the New Criminal Code from a Human Rights Perspective

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ABSTRACT

The death penalty is a form of punishment that continues to spark debate within Indonesia's criminal justice system, particularly following the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP). This study aims to analyze the existence of the death penalty under the new KUHP from a human rights perspective. The study employs a normative legal method using a legislative approach and a conceptual approach. Data were obtained through a literature review of primary, secondary, and tertiary legal materials, which were analyzed qualitatively. The results of the study indicate that the new Criminal Code retains the death penalty but classifies it as a special, alternative punishment accompanied by a ten-year probationary period. This provision reflects a shift in the paradigm of punishment from a retributive approach toward a more humanistic and rehabilitative one. From a human rights perspective, the death penalty remains controversial as it potentially conflicts with the right to life as a fundamental right. However, the reform of the death penalty in the new Criminal Code reflects the state's efforts to balance the interests of public protection with respect for human rights. Thus, the death penalty in the new Criminal Code represents a compromise between the interests of law enforcement and humanitarian values.

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1. INTRODUCTION

To this day, the death penalty remains one of the most controversial forms of punishment in modern criminal law systems. The debate over the existence of the death penalty is not only related to law enforcement and the state's interest in maintaining public order, but also touches on moral, philosophical, and *human rights* dimensions. In the context of the global " ," various countries have abolished the death penalty because it is considered contrary to the right to life as a fundamental right that cannot be diminished under any circumstances (*non-derogable rights*). Nevertheless, a number of countries, including Indonesia, still maintain the death penalty with arguments regarding the protection of public interests, the eradication of extraordinary crimes, and the deterrent effect for perpetrators of serious criminal acts [1].

The enactment of the new Criminal Code through Law No. 1 of 2023 introduces a new paradigm in Indonesia's criminal law policy. The new Criminal Code retains the death penalty as a special punishment, but its application is made alternative and conditional [2]. This regulation reflects the state's efforts to balance the interests of law enforcement with respect for human rights. On one hand, the death penalty is still viewed as a legal instrument to address serious crimes, such as terrorism and drug-related offenses. On the other hand, the development of international human rights principles has driven calls for the restriction or even abolition of the death penalty, as it is considered inhumane and potentially violates the right to life [3].

The debate over the death penalty is also closely tied to the constitutionality of the right to life within Indonesia's legal system. Article 28A of the 1945 Constitution of the Republic of Indonesia guarantees that every person has the right to life and to preserve their life [4]. Furthermore, Article 28I(1) of the 1945 Constitution affirms that the right to life is a fundamental right that cannot be diminished under any circumstances. However, the Constitutional Court, through several of its rulings, has stated that the death penalty does not conflict with the constitution as long as it is applied with due care and in a proportionate manner [5], [6]. This situation has sparked a legal discourse regarding the limits of the state's authority to restrict the right to life through criminal law.

Previous studies indicate differing perspectives on the existence of the death penalty from a human rights perspective. Some scholars argue that the death penalty violates humanitarian principles and is ineffective in reducing crime rates. Conversely, there is a view that the death penalty remains relevant for *extraordinary crimes* due to its preventive and repressive value. Nevertheless, most previous research has focused on the normative aspects of the death penalty prior to the enactment of the new Criminal Code, thus not extensively examining the shift in the sentencing paradigm following the reformulation of national criminal law.

The new Criminal Code introduces a ten-year probationary period for death row inmates as a form of moderation in sentencing. This provision reflects a more humane approach compared to previous regulations. The state offers the opportunity to commute the death penalty to life imprisonment if the inmate demonstrates remorse and behavioral improvement during the probationary period. This provision is worth examining because it reflects a shift in the orientation of Indonesian criminal law from a retributive approach toward a corrective, rehabilitative, and restorative approach without completely eliminating the death penalty from the national penal system [7].

In light of these developments, a fundamental question arises regarding the existence of the death penalty under the new Criminal Code from a human rights perspective. This issue is significant because Indonesia is caught between two often conflicting interests: the protection of the right to life as a fundamental right and the state's need to maintain public safety and order. Furthermore, the evolving landscape of international law, which increasingly favors the abolition of the death penalty, exerts normative pressure on national criminal law policies.

This study aims to analyze the existence of the death penalty following the implementation of the new Criminal Code from a human rights perspective. The analysis is conducted by examining the philosophical, legal, and sociological foundations of the death penalty provisions and their relevance to the principles of human rights protection in Indonesia. This study also aims to identify the extent to which the reformulation of the death penalty in the new Criminal Code reflects a harmonization between the interests of law enforcement and respect for the right to life as a constitutional right of citizens.

The novelty of this research lies in its focus on the transformation of the concept of the death penalty in the new Criminal Code

as a form of compromise between national criminal law policy and modern human rights principles. This study not only discusses the existence of the death penalty from a normative perspective but also examines the shift toward a more humane approach to sentencing through the mechanism of conditional death sentences. Thus, this study is expected to contribute academically to the development of research on criminal law and human rights, while also serving as a basis for evaluating the future direction of Indonesia's criminal law policy.

2. LITERATURE REVIEW

2.1 The Death Penalty in the Indonesian Criminal Law System

The death penalty is one of the primary forms of punishment that has long been recognized within Indonesia's criminal law system. From a classical criminal law perspective, the death penalty is viewed as a state instrument to impose *a deterrent effect* on perpetrators of serious criminal acts deemed to endanger public order and security. Criminal punishment is a tool of the state to uphold the rule of law and protect public interests from harmful acts [8]. Therefore, the existence of the death penalty is often associated with the social protection function in criminal law.

In the old Criminal Code (KUHP), the death penalty was classified as a principal punishment as stipulated in Article 10 of the KUHP. However, the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP) brought about a paradigm shift regarding the existence of the death penalty. The death penalty is no longer classified as the primary principal punishment but rather as a special, alternative punishment to be imposed with great caution [9]. This reformulation reflects a development in Indonesia's criminal law policy that is beginning to prioritize humanitarian values and the principles of human rights protection.

Criminal law reform must be directed toward a balance between the protection of society (*social defense*) and the protection of the individual (*individual protection*). In the context of the death penalty, this balance is reflected in the provision of a ten-year probationary period for death row inmates in the new Criminal Code. This provision offers the condemned the opportunity to reform themselves, allowing the death penalty to be commuted to life imprisonment if certain conditions are met [10]. Thus, the reformulation of the death penalty in the new Criminal Code indicates a more humanistic approach to sentencing compared to the previous system.

2.2 Human Rights and the Right to Life

Human rights are fundamental rights inherent to every human being from birth and cannot be revoked by anyone. One of the most fundamental rights is the right to life. The right to life is a natural right possessed by every human being and must be protected by the state [11]. In the development of international law, the right to life is recognized in various human rights instruments, such as *the Universal Declaration of Human Rights* (UDHR) and *the International Covenant on Civil and Political Rights* (ICCPR) [12], [13].

In Indonesia, the guarantee of the right to life is regulated in Article 28A of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to life and to preserve their life. Furthermore, Article 28I(1) of the 1945 Constitution affirms that the right to life is a human right that cannot be diminished under any circumstances. The right to life falls under the category *of non-derogable rights* that must be respected and protected by the state without exception [14]. Therefore, the application of the death penalty is often viewed as a form of restriction on the right to life that potentially conflicts with human rights principles.

Nevertheless, there is a view that human rights are not absolute. The implementation of human rights must

strike a balance between individual rights and the public interest in state affairs. In this context, the state may still impose the death penalty on perpetrators of extraordinary crimes provided it is carried out proportionally, through a fair legal process, and in accordance with statutory provisions. This perspective serves as the basis for the arguments of countries that still maintain the death penalty, including Indonesia [15].

2.3 The Existence of the Death Penalty from a Human Rights Perspective Following the New Criminal Code

The debate regarding the existence of the death penalty following the new Criminal Code highlights a tension between the interests of law enforcement and the protection of human rights. Groups advocating for the abolition of the death penalty argue that the death penalty contradicts humanitarian principles and is inconsistent with international legal developments moving toward the abolition of the death penalty. The death penalty is a form of punishment that is cruel, inhuman, and degrading to human dignity [16]. Furthermore, there is a risk of a *miscarriage of justice* that could permanently take a person's life without the possibility of redress.

On the other hand, groups supporting the retention of the death penalty argue that this form of punishment remains necessary to address serious crimes, such as terrorism, premeditated murder, and drug-related offenses. The death penalty can be maintained as a means of protecting society provided its application is carried out selectively and with due care. This view aligns with the policy of the new Criminal Code, which positions the death penalty as a last resort (*ultimum remedium*) and provides a probationary period for the convicted [17].

The provisions on the death penalty in the new Criminal Code reflect a reform of criminal law that seeks to accommodate human rights principles without completely abolishing the death penalty from the national legal system. Criminal law reform must be able to reflect the social, moral, and humanitarian values that exist within society [18]. Therefore, the concept of conditional capital punishment in the new Criminal Code can be viewed as a compromise between the state's interest in combating crime and its obligation to respect human rights. Thus, the existence of capital punishment following the enactment of the new Criminal Code remains a critical issue requiring in-depth analysis from both legal and human rights perspectives.

3. METHODS

This study employs a normative legal research design using *a statutory approach* and *a* conceptual approach. Normative legal research was chosen because this study focuses on analyzing the legal norms governing the existence of the death penalty following the enactment of Law No. 1 of 2023 on the Criminal Code from a human rights perspective. The research subjects consist of legislation, legal doctrine, and various literature related to the death penalty and human rights, while the research object is the regulation of the death penalty in the new Criminal Code and its relevance to the principle of the protection of the right to life as a human right. This research was conducted during the drafting of an article in 2026, with the research location involving *library research* using various primary, secondary, and tertiary legal sources.

The research instruments used consist of primary legal materials, such as the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2023 on the Criminal Code, Law No. 39 of 1999 on Human Rights, as well as various international human rights instruments. In addition, this study also utilized secondary legal materials, including books, scientific journals, research findings, and academic articles relevant to the research topic. The sampling technique employed was *purposive sampling*, which involves selecting

legal sources and literature directly related to the study of the death penalty and human rights. Data collection was conducted through a documentary study by examining, identifying, and cataloging various legal materials relevant to the research problem.

The data analysis method used in this study is qualitative analysis with a descriptive-analytical approach. Data obtained from primary and secondary legal materials were systematically analyzed to identify the relationship between the provisions on the death penalty in the new Criminal Code and human rights principles. The analysis was conducted through a process of legal interpretation, interpretation of norms, and an examination of relevant theories of criminal law and human rights. The results of the analysis were then organized logically and systematically to draw conclusions regarding the existence of the death penalty following the new Criminal Code from a human rights perspective, as well as its implications for the development of criminal law in Indonesia.

4. RESULTS AND DISCUSSION

The development of criminal law in Indonesia indicates a shift in the paradigm of punishment that increasingly emphasizes human values and the protection of human rights. One of the most notable changes is evident in the regulation of the death penalty under Law No. 1 of 2023 on the Criminal Code. The new Criminal Code no longer positions the death penalty as the primary punishment but rather as a special, alternative punishment. This change reflects the state's efforts to align national criminal law with the development of modern human rights principles. In this context, the death penalty remains in place, but its application is carried out in a more selective and limited manner. This policy represents a compromise between the interests of law enforcement and the protection of the right to life [19].

Historically, the death penalty has long been part of Indonesia's criminal justice system since the Dutch colonial era through *the Wetboek van Strafrecht*. The death penalty was retained because it was considered capable of deterring perpetrators of serious crimes. In practice, the death penalty is applied to perpetrators of premeditated murder, drug-related crimes, and terrorism. However, developments in international human rights thought have led to criticism of the death penalty. Many countries have begun to abolish the death penalty because it is considered contrary to the right to life as a fundamental human right [20]. These conditions have also influenced the direction of criminal law reform in Indonesia.

The new Criminal Code adopts a moderate approach toward the death penalty. This approach is evident in the provision of a ten-year probationary period for death row inmates before the sentence is carried out. If, during the probationary period, the inmate demonstrates commendable behavior and shows signs of rehabilitation, the death penalty may be commuted to life imprisonment. This provision reflects a shift in the orientation of punishment from a retributive to a rehabilitative approach. The state no longer emphasizes solely retribution against criminals but also opens opportunities for self-improvement for the convicted [21]. This indicates the influence of human rights values in the formulation of the new Criminal Code.

From a human rights perspective, the right to life is a fundamental right that cannot be diminished under any circumstances. Article 28I(1) of the 1945 Constitution explicitly states that the right to life falls under the category *of non-derogable rights*. Therefore, the existence of the death penalty is often viewed as contrary to the Constitution and international human rights principles. However, the Constitutional Court has stated in several of its rulings that the death penalty remains constitutional as long as it is applied with due care and not arbitrarily. These rulings indicate that Indonesian national law still allows for the application of the death penalty. Thus, the existence of the death penalty retains a legal basis within the Indonesian legal system [6].

The debate over the death penalty cannot be separated from theories of the

purpose of punishment. The absolute theory views punishment as a form of retribution against the perpetrator of a crime. Under this theory, the death penalty is considered appropriate for perpetrators of serious crimes as a form of justice. Conversely, the relative theory positions punishment as a means of protecting society and preventing crime. In the context of the new Criminal Code, the concept of conditional capital punishment reflects a synthesis of the absolute and relative theories. The state maintains the death penalty as a form of justice enforcement while also providing rehabilitation opportunities for the convicted [22]. This approach signifies a shift in the direction of national criminal law policy.

The death penalty is still considered important by some segments of Indonesian society. This is due to the high level of public concern regarding extraordinary crimes, such as terrorism and drug trafficking. Many argue that the death penalty is necessary to protect society from the threat of serious crimes. Furthermore, the death penalty is seen as capable of exerting a psychological deterrent effect on potential offenders. This perspective indicates that the existence of the death penalty is not solely tied to legal aspects but is also influenced by societal conditions [23]. Consequently, the abolition of the death penalty remains a complex issue in Indonesia.

Nevertheless, the effectiveness of the death penalty as a means of crime prevention remains a subject of debate. Several studies indicate that there is no significant correlation between the death penalty and a decrease in crime rates. Countries that have abolished the death penalty have also managed to maintain public safety and order. This indicates that the success of crime prevention is not solely determined by the severity of punishment. Factors such as education, social welfare, and the effectiveness of law enforcement also play a crucial role in reducing crime rates. Thus, the death penalty is not the sole solution within the criminal justice system [24].

From an international human rights perspective, the global trend is moving toward the abolition of the death penalty. This is evident in the increasing number of countries that have ratified *the Second Optional Protocol to the International Covenant on Civil and Political Rights*. The protocol aims to phase out the death penalty in various countries. However, Indonesia has not yet ratified the protocol. The Indonesian government still maintains the death penalty on the grounds of protecting national interests and public safety. This stance indicates a divergence in approach between Indonesian national law and developments in international human rights law [25].

The provisions on the death penalty in the new Criminal Code demonstrate an effort to harmonize national law with human rights principles. This harmonization is evident in the change in the nature of the death penalty, which is no longer absolute. The state provides room for evaluation of the implementation of the death penalty through a probationary period mechanism. This provision can be viewed as a form of protection for the right to life of the convicted person. Additionally, this concept also reduces the risk of irreversible execution errors. Thus, the new Criminal Code seeks to create a balance between justice, legal certainty, and public interest [26].

The concept of conditional capital punishment holds progressive value in the reform of Indonesia's criminal law. This concept differs from the previous system, which placed greater emphasis on the final execution of the death penalty. Through the new Criminal Code, the state provides the convicted person with an opportunity to demonstrate behavioral change. This reflects respect for human dignity as a legal subject. This approach aligns with human rights principles that view humans as beings with the potential to change and improve themselves [27]. Therefore, conditional capital punishment can be viewed as a form of moderation in criminal law.

Nevertheless, the existence of the death penalty continues to raise philosophical issues. Morally, the state is considered to lack the legitimacy to deprive a person of their right to life, even if that

person has committed a serious crime. This view is based on the principle that the right to life is a natural right inherent to every human being. Furthermore, the implementation of the death penalty is deemed contrary to the principles of just and civilized humanity. From a modern human rights perspective, respect for the right to life must be prioritized above all else. Consequently, criticism of the death penalty continues to grow in various countries.

On the other hand, there is a view that the right to life is not absolute. The state retains the authority to restrict certain rights for the sake of the public interest and the protection of society. In this context, the death penalty is viewed as a form of state protection for victims and the broader public. This approach is based on the principle of balancing individual rights with social interests. Consequently, the death penalty remains part of various national legal systems. Indonesia is among the countries that still adhere to this approach in its criminal law policies.

The reform of the death penalty in the new Criminal Code is also linked to developments in the theory of rehabilitation. The theory of rehabilitation emphasizes that the purpose of punishment is not merely retribution, but also the rehabilitation of the offender. In this context, the probationary period for the death penalty provides the condemned with an opportunity to reform their behavior. The state does not immediately carry out the execution but instead evaluates the convict's progress. This approach indicates that Indonesia's penal system is beginning to move toward a more humane direction. This constitutes one form of national criminal law reform [28].

Reforms to the death penalty are also influenced by the dynamics of the national legal and political landscape. The government seeks to maintain the death penalty due to ongoing public demands for the eradication of serious crimes. At the same time, the government also faces international pressure regarding human rights protection. These conditions have led to the adoption of a compromise policy through conditional capital punishment. This policy allows the state to retain the death penalty without disregarding humanitarian principles. Thus, the reform of capital punishment in the new Criminal Code is the result of a national legal-political compromise.

In practice, the implementation of the death penalty in Indonesia still faces various challenges. One of the main issues is the lengthy waiting period for execution faced by death row inmates. This situation often causes prolonged psychological suffering for the inmates. From a human rights perspective, this situation can be categorized as inhumane treatment. Therefore, many parties advocate for the need to evaluate the mechanisms governing the implementation of the death penalty. The new Criminal Code attempts to address this issue through a probationary period system and behavioral evaluation of the condemned [29].

Furthermore, the risk of judicial error is a primary reason for opposing the death penalty. Errors in the judicial process can result in a person losing their life permanently with no possibility of reversal. In modern legal systems, the possibility of *a miscarriage of justice* cannot be entirely avoided. Therefore, the death penalty is considered to have extremely fatal consequences if a legal error occurs. The provision for conditional death sentences in the new Criminal Code can be viewed as an effort to minimize this risk. The state is given time to re-evaluate death sentences before execution is carried out.

From a sociological perspective, the existence of the death penalty is also influenced by a society's legal culture. Some segments of Indonesian society still view the death penalty as a form of justice for victims of serious crimes. This view arises from the belief that perpetrators of certain crimes do not deserve leniency. However, there are also groups in society that reject the death penalty because it is seen as contrary to humanitarian values. These differing viewpoints demonstrate that the issue of the death penalty is a multidimensional problem. Therefore, discussions regarding the death

penalty cannot be conducted solely from a single legal perspective.

From the perspective of modern criminal law, legal reform must balance legal certainty, justice, and public interest. The new Criminal Code seeks to accommodate these three aspects through provisions on conditional capital punishment. Legal certainty is reflected in clear provisions regarding the conditions and mechanisms of capital punishment. Justice is realized through the protection of society from serious crimes. Meanwhile, the aspect of public interest is evident in the opportunity for rehabilitation for the convicted. This approach demonstrates that the reform of the death penalty is being carried out in a more comprehensive manner.

Research findings also indicate that the death penalty in the new Criminal Code functions as an ultimum remedium. This means the death penalty is positioned as a last resort within the penal system. The state does not treat the death penalty as the primary instrument in enforcing criminal law. This approach differs from the classical criminal law paradigm, which places greater emphasis on severe punishment. In the context of human rights, this change represents a positive step in the reform of Indonesia's criminal law. Although it has not yet completely abolished the death penalty, the new Criminal Code has demonstrated a direction toward a more humane reform.

The provision for conditional commutation of the death penalty also reflects the influence of the concept of restorative justice in Indonesian criminal law. This concept emphasizes the importance of rehabilitation and social reintegration over retribution alone. In the context of the death penalty, the possibility of converting the sentence to life imprisonment indicates a rehabilitative orientation toward the offender. The state provides the convicted person with an opportunity to become a better individual. This demonstrates that Indonesia's penal system is beginning to adopt a more progressive approach. Thus, the death penalty in the new Criminal Code has a different character compared to the previous system.

Nevertheless, the provisions on the death penalty in the new Criminal Code still draw criticism from various quarters. Some human rights activists argue that the existence of the death penalty remains inconsistent with the principle of the right to life. They contend that changes to the mechanisms for carrying out the death penalty do not eliminate the substantive human rights violations inherent in it. Furthermore, the death penalty is considered incompatible with the development of modern legal civilization, which places greater emphasis on rehabilitation. This criticism indicates that the reform of the death penalty in the new Criminal Code has not yet been fully accepted by all parties. The debate on this issue is expected to continue.

On the other hand, groups supporting the death penalty argue that the complete abolition of the death penalty is not yet appropriate for Indonesia's current conditions. The high incidence of certain crimes is seen as still requiring a severe criminal penalty. Furthermore, the death penalty is viewed as a form of protection for the rights of victims and the broader public. This perspective demonstrates that the concept of human rights is often interpreted differently by various segments of society. In this context, the state must be able to balance the various interests at stake. Therefore, the death penalty policy in the new Criminal Code can be viewed as a middle ground.

The discussion regarding the death penalty is also linked to the principle of proportionality in criminal law. This principle emphasizes that punishment must be commensurate with the degree of guilt and the impact of the offender's actions. In the context of extraordinary crimes, some argue that the death penalty remains a proportionate punishment. However, others contend that there is no justification for the state to deprive an individual of the right to life. This divergence of views highlights a conflict between retributive and humanistic approaches in criminal law. The new Criminal Code (KUHP) seeks to

accommodate both approaches through the concept of conditional capital punishment.

The reform of the death penalty in the new Criminal Code is part of a comprehensive overhaul of the national criminal law system. This overhaul is not only about changes in legal norms but also a shift in the paradigm of punishment. The state is beginning to shift the orientation of punishment from retribution toward rehabilitation. This is evident in various provisions emphasizing rehabilitation and social reintegration. In the context of the death penalty, this change is realized through an evaluation system and a probationary period. Thus, the reform of the death penalty is part of the transformation of Indonesian criminal law.

From a comparative perspective, several Asian countries still maintain the death penalty despite facing international pressure. Countries such as Japan, China, and Singapore continue to impose the death penalty for certain crimes. This indicates that the existence of the death penalty is still considered relevant within specific social and cultural contexts. Indonesia shares similar characteristics in maintaining the death penalty. However, Indonesia is beginning to show a trend toward limiting the application of the death penalty through reforms to the new Criminal Code. This approach demonstrates efforts to align with developments in international law.

In addition to legal factors, political factors also influence the existence of the death penalty in Indonesia. Death penalty policies are often influenced by public opinion and national security conditions. In certain situations, the government tends to maintain the death penalty to demonstrate firmness toward perpetrators of serious crimes. However, pressure from the international community also underscores the need to respect human rights. This situation creates a complex legal-political dynamic in the formulation of death penalty policies. Consequently, the existence of the death penalty remains a sensitive issue within Indonesia's legal system.

Under the new Criminal Code, the death penalty is no longer positioned as an absolute punitive instrument. The state allows for a humanitarian approach through mechanisms for evaluating the behavior of convicted individuals. This approach demonstrates the influence of human rights principles in the reform of Indonesia's criminal law. Although the death penalty remains in place, its application has become more limited and selective. This represents a significant development in the history of the nation's criminal law. This reform indicates that Indonesian criminal law is beginning to move toward a more modern and humanistic paradigm.

In the context of human rights protection, the reform of the death penalty in the new Criminal Code can be viewed as a transitional step toward restricting the death penalty. The state has not yet fully abolished the death penalty, but has imposed significant restrictions on its application. This approach reflects the state's caution in responding to international human rights developments. Furthermore, the reform also demonstrates an awareness that respect for the right to life must be a primary concern within the criminal justice system. Therefore, the policy of conditional capital punishment can be regarded as a form of normative compromise.

Academically, the reform of the death penalty in the new Criminal Code makes an important contribution to the development of criminal law in Indonesia. This reform demonstrates that criminal law is dynamic and capable of adapting to societal changes. Furthermore, the regulation of the conditional death penalty opens new avenues for research on the relationship between criminal law and human rights. This indicates that the formation of law is influenced not only by normative aspects but also by social, political, and moral values. Thus, the existence of the death penalty following the new Criminal Code remains a relevant issue warranting continued examination.

Ultimately, the existence of the death penalty following the new Criminal Code

indicates a significant shift in Indonesia's criminal law policy. The state continues to maintain the death penalty as a form of protection for society against serious crimes. However, its implementation is carried out with a more humane approach and with due regard for human rights principles. This reform reflects the state's efforts to balance the interests of law enforcement with the protection of the right to life. Therefore, the death penalty in the new Criminal Code can be viewed as a compromise between the demands of justice and respect for humanity.

5. CONCLUSION

The findings indicate that the death penalty remains a valid form of punishment under Law No. 1 of 2023 concerning the Indonesian Criminal Code. However, unlike the previous Criminal Code, it is no longer imposed as an ordinary principal punishment but as a special and conditional sanction accompanied by a ten-year probationary period before execution may be carried out. This reform reflects a significant shift in Indonesia's sentencing policy from a purely retributive model toward a more humane and rehabilitative approach. Although the death penalty continues to generate debate regarding its compatibility with the right to life, the conditional formulation introduced by the new Criminal Code demonstrates the legislature's effort to reconcile criminal law enforcement with the protection of human rights. Accordingly, the existence of the death penalty in the new Criminal Code represents a legal compromise between safeguarding public interests and respecting fundamental human rights.

It is recommended that the implementation of conditional death sentences be consistently supervised to ensure compliance with the principles of due process, proportionality, and human rights protection. Continuous evaluation of the effectiveness of this policy is also necessary to support future criminal law reform in Indonesia.

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