

## LEGAL ANALYSIS OF THE PROVISIONS ON THE DEATH PENALTY IN THE CRIMINAL CODE

Dedy Irawan<sup>1\*</sup>, Diding Rahmat<sup>2</sup>, Ardison Asri<sup>3</sup>

<sup>1,2,3</sup>Marshal Suryadarma Aerospace University, East Jakarta, Indonesia  
dedyirawan@gmail.com<sup>\*1</sup>, didingrahmat@unsurya.ac.id<sup>2</sup>

### Abstract

Capital punishment is the most severe form of punishment in the Indonesian criminal justice system and remains a controversial issue that sparks debate between the need to uphold justice and the protection of human rights, particularly the right to life. Under the old Criminal Code, capital punishment was included as a primary punishment that could be imposed on perpetrators of serious crimes such as premeditated murder, terrorism, treason, and drug trafficking. Meanwhile, the new Criminal Code, as specified in Law No. 1 of 2023, introduces significant changes in the regulation of the death penalty. The death penalty is no longer positioned as the primary punishment but rather as a conditional alternative punishment, which is only imposed if other penalties are deemed insufficient to achieve justice. This study aims to examine the differences in the regulation of the death penalty in the old and new Criminal Codes and to analyze the considerations of judges in imposing the death penalty based on a study of Decision No. 32/Pid.Sus/2025/PN Pts. The approach used is normative legal with a descriptive analysis method. The results of the study show a shift in the criminal law paradigm from a retributive approach to a more restorative and humanistic approach. In the new Criminal Code, the death penalty can be imposed with a probation period of 10 years, and if during that period the convict demonstrates good attitude and behavior, the sentence can be changed to life imprisonment or a fixed term of imprisonment. The regulation of the death penalty in the new Criminal Code reflects the state's efforts to maintain the deterrent effect on serious crimes while upholding the principles of humanity and balanced justice.

**Keywords:** Death Penalty, Criminal Code, Judicial Considerations

**INTRODUCTION**

The unitary state of the Republic of Indonesia was established based on the 1945 Constitution on August 18, 1945, one day after the proclamation of independence. The 1945 Constitution stated the objectives of the state. The objectives of the state are stated in the preamble to the 1945 Constitution, which has been amended four times, most recently in 2002, and given the full name of the 1945 Constitution of the Republic of Indonesia. These objectives are the primary interests of a state's order. Organizing a state begins with the establishment of laws as regulations that regulate order in the life of the nation and state.

Law is the most important system in the implementation of a series of institutional specialties. It seeks to prevent the abuse of power in the political, economic, and social spheres in various ways and acts as the primary legal intermediary in social relations between communities against criminalization in criminal law. Criminal law itself is defined as legal regulations regarding criminal offenses. It is a provision that regulates and limits human behavior in eliminating violations of the public interest.(Muladi & Arief, 2017). As public law, criminal law contains many norms, namely prohibitions and commands accompanied by the threat of criminal penalties for violations.

The nature of criminal law is seen in the implementation of criminal law, which in essence does not depend on the will of the individual who is directly harmed in concrete terms, but is up to the government as a representative of the public interest.(Muladi & Arief, 2017). This occurs because the sanctions imposed for acts that disrupt the balance of society are often disproportionate to the consequences suffered by the victim. Therefore, the subjective nature felt when criminal law was still civil in nature has changed to an objective nature. The main purpose of criminal punishment is to protect the interests of society as a collectivity from actions that threaten or even harm it, whether coming from individuals or groups of people (organizations). These various societal interests include peace, tranquility, and order in community life. Criminal law should be maintained as a means of social defense, namely for the protection of society.

Determining the purpose of punishment is a rather dilemmatic issue, especially in determining whether punishment is aimed at taking revenge for the crime that occurred or whether the proper aim of the criminal process is to prevent anti-social behavior.(Mulyadi, 2016). Punishment has several objectives that can be classified based on theories of punishment. Theories about the objectives of punishment that revolve around differences in the essence of basic ideas about punishment can be seen from several perspectives.

The objective of punishment in the New Criminal Code (Law No. 1 of 2023) shifts from retributive justice to a corrective, restorative, and rehabilitative justice approach. According to Article 51, the objectives are to prevent crime, rehabilitate convicts, resolve conflicts, restore balance, and foster a sense of security and peace.

Herbert L. Packer stated that there are two conceptual views, each of which has different moral implications, namely the retributive view and the utilitarian view.(Harkrisnowo, 2019). The retributive view assumes punishment as a negative reward for deviant behavior committed by members of society, thus viewing punishment as merely retribution for wrongdoing committed on the basis of each individual's moral responsibility. This view is said to be backward-looking. The utilitarian view views punishment in terms of its benefits or usefulness, where what is seen is the situation or condition that is intended to be produced by the imposition of the punishment. On the one hand, punishment is intended to improve the attitude or behavior of the convict, and on the other hand, punishment is also intended to deter others from committing similar acts (Harkrisnowo, 2019). This view is said to be forward-looking and at the same time has a deterrent nature.

Along with the development of the times, the number of human population is increasing, this is also in line with the development of the patterns of society in it, one of

which is related to the problems faced. Based on the results of observations along with the development of the times to the modern world today, the problems faced by society are also increasingly complex, this shows that rules are needed to regulate the lives of citizens or society, especially with the changes in social conditions in society, it is possible that crimes will occur in increasing numbers and various forms, therefore they must also be handled immediately and seriously by law enforcement officers.(Hiariej, 2016).

However, sociologically, society must also be responsible for the emergence of these crimes, because society is also a victim of crime, with the understanding that it is impossible for a crime to occur if it does not cause victims on the other side (crime without victim) such as gambling, prostitution and drug abuse.(Hiariej, 2016).

The threat of the death penalty is a form of social defense, according to Hartawi AM "The death penalty is a social defense tool to prevent the general public from disasters and dangers or threats of major dangers that may occur and that will befall the community which have or have caused misery and disrupted social, religious and state life."(Hartawi, 2019).

The debate over the death penalty has been ongoing. Some believe it's a fitting punishment for the crime, while others believe it violates human rights.\The implementation of the death penalty in Indonesia is a legacy of Dutch law, through the provisions of Article II of the Transitional Provisions of the 1945 Constitution which states that all existing laws and regulations are still valid before new ones are enacted according to Indonesian law, and is strengthened by Law Number 1 of 1946 concerning the implementation of the *Wetboek van Strafrecht (WvS)* as the Criminal Code.

Internationally, many countries have recently rejected and abolished the death penalty from their criminal systems. This is based on the grounds that it violates human rights and humanitarian values. However, as a developing nation, Indonesia still maintains the death penalty in its national criminal system, arguing that it is still needed as a form of punishment that deters and instills fear in society, which automatically reduces future crimes.(Pangaribuan, 2020).

Despite the pros and cons of the existence of the death penalty in Indonesia, Indonesia is still one of the countries that adheres to and maintains the death penalty as a form of punishment in its national criminal system.

The death penalty is still maintained, generally based on conventional reasons, namely the need for the death penalty is very necessary to eliminate people who are considered to endanger the public interest or the State and are deemed irreparable. One of the criminal law experts and figures in national criminal law reform, Barda Nawawi Arif, explicitly stated in his book that the death penalty still needs to be maintained in the context of the National Criminal Code reform, stating "that although the death penalty is maintained primarily based on efforts to protect society (so it is more focused or oriented towards the interests of society), its application is expected to be selective, careful and also oriented towards the protection/interests of individuals (criminal perpetrators)"(Arief, 2019).

In this study, the decision Number 32/Pid.Sus/2025/PN Pts was reviewed. The Decision of the Head of the Putussibau District Court Number 32/Pid.Sus/2025/PN Pts dated April 24, 2025 concerning the Appointment of the Panel of Judges; - The Decision of the Panel of Judges Number 32/Pid.Sus/2025/PN Pts dated April 24, 2025 concerning the Determination of the Trial Day; - Case files and other relevant letters.

After hearing the statements of the witnesses and the defendant and considering the written evidence and evidence presented at the trial; After hearing the reading of the criminal charges submitted by the Public Prosecutor which are in essence as follows:

1. Declaring that the Defendant Rinto Anak Dari Rabung (Deceased) was legally and convincingly proven guilty of committing the crime of "attempted or evil conspiracy without rights or against the law to offer for sale, sell, buy, receive, act as an intermediary

in buying and selling, exchange or hand over Class I Narcotics in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams" as regulated and threatened with criminal penalties in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, as per the first indictment of the Public Prosecutor;

2. Sentencing the defendant Rinto Anak Dari Rabung (deceased) to the death penalty;
3. Determine that the Defendant remains in detention;
4. Establishing evidence in the form of:

Based on this, the author is interested in further research and chooses the title " "Legal Analysis of the Regulation of the Death Penalty in the Criminal Code (KUHP)". Based on the description above, the main problems that can be researched and included in this paper can be formulated as follows: How is the death penalty regulated in the Criminal Code? What are the considerations of the panel of judges in applying the death penalty based on decision Number 32/Pid.Sus/2025/PN Pts?

## **RESEARCH METHODS**

In this legal research, the author uses a normative legal research method, namely research conducted by examining secondary legal materials, such as laws and regulations, legal literature, doctrines, and relevant court decisions (Subagyo, 2004). The approach used in this research includes a statute approach, namely by examining the provisions in the Criminal Code (KUHP), especially those regulating the death penalty, as well as other relevant laws and regulations. In addition, this research also uses a conceptual approach to understand the concept of the death penalty in criminal law, including the purpose of punishment and related human rights principles (Marzuki, 2005). The research data was obtained through library research, namely by collecting and analyzing primary legal materials (statutory regulations and court decisions), secondary legal materials (books, journals, scientific articles), and tertiary legal materials (legal dictionaries and legal encyclopedias) that support the analysis of the regulation of the death penalty in the criminal law system in Indonesia.

## **RESULT AND DISCUSSION**

### **A. Regulation of the Death Penalty in the Criminal Code**

Criminal law generally refers to a collection of regulations, norms, and prohibitions established by a competent authority, accompanied by the threat of sanctions or punishment for violators. The sanctions imposed are specific consequences determined along with the regulations. The primary purpose of imposing sanctions is to protect individual rights, prevent crime, and maintain and restore order and peace in society and the state. These sanctions can take the form of physical or psychological suffering, deprivation of liberty, or even death. The death penalty, known as the most extreme form of punishment, is considered a very frightening threat to anyone. This punishment is imposed as a result of serious violations of regulations, norms, or prohibitions established by a legitimate authority.

The death penalty is the most severe form of punishment because it takes a person's life, so it is only applied to certain criminals. The debate over the necessity of the death penalty for criminals continues to this day. The death penalty is exceptional, meaning it will only be imposed by a judge if it is deemed absolutely necessary. Historically, the death penalty has been known long before the formation of the Indonesian state, even dating back to the era of kingdoms. Therefore, the death penalty is not a foreign concept in the Indonesian context. However, the method of its implementation varies across places and times. The application of the death penalty by a judge to a criminal indicates that the judge has revoked the human right to life. In the context of Human Rights (HAM), the right to life is a non-

derogable right, meaning this right cannot be reduced in any form and the state has an obligation to protect it. Other rights that are equal to the right to life include the right not to be tortured, the right to freedom of opinion and belief, the right to religion, the right to be free from slavery, the right to be recognized as an individual before the law, and the right not to be subjected to retroactive punishment.

Here, the death penalty serves as a penal tool in handling crime, with the aim of providing a deterrent effect on the public and on the convicted person, preventing them from committing crimes again (reducing the likelihood of recurrence). The focus of the death penalty is repressive action against perpetrators. In addition to using penal tools, crime handling efforts can also be achieved through non-penal means. These means are more sociological in nature and require a longer timeframe, as their implementation is ongoing and focuses on the preventive aspect of crime before it occurs.\

In the Indonesian criminal justice system, the death penalty serves as a last resort to protect the public from serious criminal acts and to create a deterrent effect on the public, so that they are afraid to commit serious crimes that can be punished with the death penalty. The death penalty is the harshest type of principal punishment and is regulated in Article 10 of the Old Criminal Code (KUHP) or Law Number 1 of 1946. The death penalty can only be imposed after all other legal actions, such as cassation, appeals and pardons, have been exhausted and have not yielded results.

The death penalty is the harshest form of punishment in the Indonesian criminal law system. Under the Old Criminal Code (KUHP), provisions regarding the death penalty are regulated in Article 10, which distinguishes between principal and additional penalties. Principal penalties include the death penalty, imprisonment, detention, and fines. Additional penalties include the revocation of certain rights, the confiscation of certain items, and the announcement of the judge's verdict.

The provisions regarding the implementation of the death penalty in the Old Criminal Code are contained in a number of articles, namely Articles 104, 111 paragraph (2), 124, 124 bis, 140 paragraph (3), 340, 365 paragraph (4), and 444. The death penalty is carried out in the traditional way, where an executioner ties a rope around the neck of the convict at the hangman's place, then the board on which the convict stands is dropped, causing death by strangulation. Article 104 of the Old Criminal Code regulates acts of treason aimed at killing the President and Vice President. If the treason results in the deprivation of their liberty or makes them unable to carry out government duties, the perpetrator can be subject to the death penalty. Meanwhile, Article 111 paragraph (2) regulates the death penalty for individuals who establish relations with foreign countries or certain groups with the intention of causing hostility, and if the action succeeds in causing hostility or war. Article 124 emphasizes treason against the state. Any individual involved in the planning, preparation, or implementation of actions that attack the state, or assist the enemy of the state, can be sentenced to death. Article 140 paragraph (3) regulates the death penalty for acts of treason that are carefully planned and result in death. In addition, Article 340 regulates premeditated murder, where the perpetrator can be sentenced to death if the murder is carried out based on a well-thought-out plan. Article 365 paragraph (4) regulates the death penalty for perpetrators of theft that is carried out in collaboration and results in serious injury or death. Finally, Article 444 regulates the death penalty for violence committed in attacks on ships that result in death.

Under the Old Criminal Code (KUHP), articles establishing the death penalty also provided alternative punishments, namely life imprisonment or a fixed term of imprisonment. The decision regarding the type of punishment imposed was based on the discretion of the judge handling and deciding the case. This gave judges flexibility in selecting a punishment appropriate to the nature and impact of the crime committed.

In the New Criminal Code, Law No. 1 of 2023, Articles 64 to 100 generally regulate

the sentencing system. Their primary focus is the classification of types of punishment (main, additional, and special) and the mechanism for the conditional death penalty. Articles 64-67 define these types of punishment, while Article 100 stipulates specific provisions regarding the death penalty, with a 10-year probationary period before it can be commuted to life imprisonment.

Article 3 of Law No. 1 of 2023 concerning the National Criminal Code regulates the principle of *lex mitior*, or changes to legislation (transitional matters). If a change in law occurs after a crime has occurred, the new regulation applies, unless the old regulation is more favorable to the perpetrator. If the act is no longer punishable, the legal process is stopped or the perpetrator is released.

The New Criminal Code brings major reforms to the Indonesian penal system by adding new types of punishment, restructuring the position of the death penalty, and prioritizing a more humanistic and modern approach compared to the Old Criminal Code.

In addition, there have been several other cases involving premeditated murder, child abuse, child rape, and corruption, although these are relatively small compared to drug cases. While the death penalty is applied to corruption in Indonesia, its effectiveness in reducing corruption remains questionable. Comprehensive empirical data linking the death penalty to a reduction in corruption is lacking, and the threat of the death penalty does not appear to automatically reduce corruption in a country. In comparison, countries such as Denmark, which abolished the death penalty in 1930, and New Zealand since 1961, have shown low levels of corruption even without the death penalty. Finland, which also abolished the death penalty in 1972, and Singapore, which does not apply the death penalty to corruption crimes under its Prevention of Corruption Act, still show high corruption perception indices.

Furthermore, in Indonesia, the death penalty is more often applied to drug cases, which, while serious crimes, often do not result in immediate death or are not based on intent to kill. This raises questions about the suitability of the death penalty as an effective punishment. Based on this reality, it can be concluded that the death penalty has not been proven to significantly reduce crime rates.

Indonesia recognizes the existence of Human Rights (HAM) guaranteed by the 1945 Constitution of the Republic of Indonesia. In the context of human rights, the application of the death penalty has caused debate because it is considered contrary to the right to life as regulated in Article 28A of the 1945 Constitution, which states "Everyone has the right to life and the right to defend his life." The death penalty is often criticized because it is considered to violate human rights, especially the fundamental right to life. The principle that everyone has the right to life, a universal right that cannot be revoked by anyone, is the main basis in arguments against the application of the death penalty. Thus, the relationship between the death penalty and human rights is complex, because although the state has the authority to impose punishment, such action can be seen as a violation of the most fundamental human rights.

Many argue that the death penalty represents a government's failure to prevent and take preventative measures against crime. The death penalty is often seen as a symbolic gesture by the government to show sympathy for victims, although it actually reflects a failure to prevent crime in the first place. International critics, including those from the United Nations (UN), also emphasize that there is no scientific research to conclusively prove that the death penalty is effective in reducing crime. Another concern is the risk of judicial error, where judges can make wrong decisions, and once a defendant is sentenced to death, there is no way to correct such errors.

However, some argue that the death penalty should remain in place as a deterrent, hoping that this terrifying punishment will deter others from committing crimes. Furthermore, they see the death penalty as a way to bring justice to perpetrators and ensure a sense of

security for society.

As a mediator between abolitionists who oppose the death penalty and retentionists who support it, the initiators of Indonesia's New Criminal Code formulated "The Indonesian Way." In this approach, the death penalty, previously a principal punishment, is now transformed into an alternative punishment. This means that the death penalty can be chosen by a judge as a last resort if other sanctions are deemed inadequate as a response to the crime committed.

Article 64 of the New Criminal Code or Law Number 1 of 2023 states that the criminal system includes principal penalties, additional penalties, and special penalties for certain crimes according to the law. Article 67 states that this special penalty involves the death penalty, which is always applied as an alternative. Article 98 explains that the death penalty is intended as an effort to prevent criminal acts and protect society. Article 99 states that the death penalty can only be carried out after the convict's request for clemency has been rejected by the President. Article 100 of the Regulation stipulates that the judge who imposes the death penalty must grant a probationary period of 10 years. During this period, an assessment will be made of the defendant's level of remorse, desire to improve himself, and the defendant's involvement in the crime. If the defendant shows deep remorse and intention to improve himself during the probationary period, the death penalty can be commuted to life imprisonment based on a Presidential decision based on considerations from the Supreme Court.

Based on this, the author's opinion is that Article 99 paragraph (4) of the New Criminal Code emphasizes that additional penalties may not be imposed indefinitely, but rather are limited to a maximum of 5 years as a form of protection of human rights and application of the principles of justice and proportionality in the Indonesian criminal system.

However, if the defendant fails to show remorse or perform good behavior during the probationary period, the death penalty will remain in effect as the final punishment, and its implementation will be ordered by the Attorney General. This approach reflects an effort to provide the defendant with an opportunity to demonstrate self-improvement while maintaining the death penalty as a last resort.

In the New Criminal Code, the articles that regulate crimes punishable by death include various serious crimes that threaten state security, humanity, and public safety. The provisions in the New Criminal Code that regulate crimes punishable by death include various serious crimes, such as treason with the aim of killing or depriving the President of his independence (Article 191), treason to separate territory from the Unitary State of the Republic of Indonesia (Article 192), treason for the benefit of foreign parties (Article 212 paragraph (3)), premeditated murder (Article 459), and theft resulting in serious injury or death (Article 479 paragraph (4)). In addition, the death penalty is also applied to violence against aviation safety (Article 588 paragraph (2)), genocide (Article 598), crimes against humanity (Article 599), terrorism (Article 600), and serious narcotics crimes (Article 610 paragraph (2) letters a and b).

The death penalty, as defined by the New Criminal Code, applies to crimes deemed extremely serious and having a serious impact on national security, human life, and public safety. This regulation reflects the state's commitment to addressing serious crimes with the strictest sanctions, while still allowing for special considerations in its implementation, as stipulated in the review mechanism through pardons and probation.

A ten-year probationary period for certain crimes punishable by death can be considered complex and create legal uncertainty. However, this probationary period aims to ensure that decisions regarding the death penalty are made with the utmost care. Probation, or a conditional death penalty, provides time for the defendant to demonstrate remorse and self-improvement, thus providing a basis for mitigating or avoiding judicial errors in decision-

making.

This approach reflects an effort to balance justice and prudence, allowing for potential changes in the defendant before the death penalty is actually carried out. While potentially creating uncertainty, this step is considered necessary to minimize the risk of an improper or unfair execution.

## **B. Considerations of the Panel of Judges in Applying the Death Penalty Based on Decision No. 32/Pid.Sus/2025/PN Pts**

A crime is a fundamental concept in criminal law. Legally, a crime refers to an act that violates criminal law. Formally, a crime is behavior that violates the provisions of criminal law, so any action prohibited by law must be avoided.(Andi, 2015). Anyone who violates these provisions will be subject to criminal penalties. Therefore, certain prohibitions and obligations that must be complied with by every citizen must be included in laws or government regulations, both at the central and regional levels.

A crime, as a fundamental concept in criminal law, is an important legal concept. In a formal legal context, a crime is any form of behavior that violates criminal law. Therefore, any act prohibited by law must be avoided, as anyone who violates it will be subject to criminal sanctions.(Wahyudi, 2016). Therefore, it is important that certain prohibitions and obligations that must be obeyed by every citizen are included in laws or government regulations, both at the central and regional levels. This criminal law enforcement ensures that any actions that violate the law can be subject to appropriate sanctions, maintaining order and security in society (Wijaya, 2017).

From a legal perspective, criminal acts are not merely acts that violate legal norms, but also reflect the law's commitment to upholding social order. Prohibitions in criminal law encompass a variety of actions deemed detrimental to society, and obligations that citizens must comply with are regulated to ensure that the law can be enforced fairly and effectively.(Susilo, 2014). Thus, criminal acts serve not only as an instrument of punishment but also as a tool to maintain social harmony and prevent crime. Government regulations, both at the central and regional levels, play a crucial role in strengthening this legal framework, ensuring that every individual understands and complies with applicable laws (Kuswandi, 2018).

Narcotics crimes are categorized as special crimes, where the provisions used, including procedural law, utilize special provisions. They are called special crimes because narcotics crimes are not regulated by the Criminal Code (KUHP), but rather by Law Number 35 of 2009 concerning Narcotics.(Andi, 2015). This special law functions as "lex specialis derogat lex generalis," which is a legal principle that states that special laws override general laws (Andi, 2015).

Law Number 35 of 2009 concerning Narcotics is a comprehensive and firm legal instrument for regulating narcotics use in Indonesia. By defining narcotics crimes as serious crimes and imposing severe sanctions on violators, this law aims to protect public health and safety and combat the distribution of illegal narcotics. Through consistent law enforcement efforts and effective rehabilitation programs, the government hopes to reduce the prevalence of narcotics abuse and its negative impacts in Indonesia.(Wijaya, 2017).

The death penalty consists of two words, namely "penal" and "death." The word "penal" itself comes from the Dutch word "Straf," which is often translated as "punishment." However, the term "penal" is more appropriate to use than "punishment," because the word "punishment" is more general and is often used as a translation of the Dutch word "recht." The term "penal" has a specific meaning that is directly related to criminal law.(Kuswandi, 2018). According to the legal dictionary, the death penalty is a form of punishment imposed on a perpetrator of a crime by taking their life.

Based on the decision of the Supreme Court of the Republic of Indonesia Number 32/Pid.Sus/2025/PN Pts Putussibau District Court which tried criminal cases with ordinary examination procedures in the first instance handed down the following decision in the case of Defendant RINTO Son of RABUNG (Alm); Place of birth: Tangit; Age/Date of birth: 39 years/September 8, 1985; Gender: Male; Nationality: Indonesian; Residence: Batu Ampar, RT 002/RW 001, Keling Panggau Village, Empanang District, Kapuas Hulu Regency; Religion: Catholic; Occupation: Farmer/Cultivator. The defendant was arrested from November 11, 2024 to November 14, 2024. And the arrest was extended from November 15, 2024 to November 17, 2024.

The defendant was accompanied by Fian Wely, SH, Legal Counsel whose office is at Jalan Diponegoro Gg. Wala No. 04 B, Putussibau Kota Subdistrict, North Putussibau District, Kapuas Hulu Regency, based on the Decree on the Appointment of Legal Counsel Number 32/Pen-Pid.Sus/2025/PN Pts dated April 30, 2025; The District Court; After reading:

Stipulation of the Head of the Putussibau District Court Number 32/Pid.Sus/2025/PN Pts dated April 24, 2025 concerning the Appointment of the Panel of Judges; - Stipulation of the Panel of Judges Number 32/Pid.Sus/2025/PN Pts dated April 24, 2025 concerning the Determination of the Trial Day; - Case files and other relevant documents.

After hearing the statements of the witnesses and the defendant and considering the written evidence and evidence presented at the trial; After hearing the reading of the criminal charges submitted by the Public Prosecutor which are in essence as follows:

1. Declaring that the Defendant Rinto Anak Dari Rabung (Deceased) was legally and convincingly proven guilty of committing the crime of "attempted or evil conspiracy without rights or against the law to offer for sale, sell, buy, receive, act as an intermediary in buying and selling, exchange or hand over Class I Narcotics in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams" as regulated and threatened with criminal penalties in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, as per the first indictment of the Public Prosecutor;
2. Sentencing the defendant Rinto Anak Dari Rabung (deceased) to the death penalty;
3. Determine that the Defendant remains in detention;
4. Establishing evidence in the form of:
  - 1 (one) black Redmi 10 brand cellphone. Confiscated for destruction;
5. Charge court costs to the state

Considering, that the Panel of Judges will then consider whether based on the legal facts mentioned above, the Defendant can be declared to have committed the crime with which he is accused; Considering, that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, by taking into account the legal facts mentioned above, directly chooses the First alternative charge as regulated in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the elements of which are as follows:

1. Each person;
2. Those who attempt or conspire without authority or against the law to offer for sale, sell, buy, act as intermediaries in buying and selling, exchange, hand over or receive Class I Narcotics in non-plant form weighing more than 5 (five) grams;

Considering, that regarding these elements, the Panel of Judges considers the following:

Ad.1 Every person;

Considering, that what is meant by the element "every person" in criminal law is every legal subject who can be in the form of an individual (*natuurlijke-persoon*) or a legal entity

(rechst-persoon) and who can be held legally accountable, brought to trial because he has been accused of committing a criminal act as referred to in the Public Prosecutor's indictment;

Considering, that in this case the Public Prosecutor has brought a Defendant to trial in a state of physical and mental health. After an identity check was conducted, the Defendant admitted to being named Rinto Anak Dari Rabung (deceased). The Defendant's identity, as stated in the Public Prosecutor's indictment, has been confirmed by witnesses and acknowledged by the Defendant himself. Therefore, the Panel of Judges considers that the Defendant is the same person as the one charged by

The Public Prosecutor committed the crime as stated in the indictment above. Therefore, it can be concluded that in this case there was no error in persona regarding the person brought to trial. Considering, that based on the above considerations, the first element, namely every person, has been fulfilled according to the law. However, regarding whether the Defendant can be blamed for the crime charged against him, the Panel of Judges will consider the following elements.

Ad.2 Anyone who attempts or conspires without the right or against the law to offer for sale, sell, buy, act as an intermediary in buying and selling, exchange, hand over or receive Class I Narcotics in non-plant form weighing more than 5 (five) grams;

Considering, that in this second element consists of several elements of the act which are alternative in nature, so that if one of the elements of the act has been fulfilled, then the other elements of the act do not need to be proven again or in other words all of the second elements have been fulfilled according to the law; Considering, that in the Public Prosecutor's indictment there is a provision of Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which regulates attempts (poging) and criminal conspiracy (samenspanning), where this element is not an element of a criminal act that stands alone, but rather as a preliminary act (voorbereidende handeling) or joinder delict (connecting delict) of the main crime, while this provision is only to determine the qualification of the existence of an agreement between two or more people to commit a crime. In the context of Article 132 paragraph (1) of the Narcotics Law, criminal conspiracy includes an agreement to commit a narcotics crime as regulated in certain articles, including Article 114. This agreement does not require further implementation, simply by having an agreement to commit the crime, the existence of a criminal conspiracy can be said to be fulfilled. In the indictment, this element has been attached by the Public Prosecutor to the main elements of the actions carried out by the Defendant, so that in this case the Panel of Judges will consider it simultaneously in considering the 2nd (second) element below.

Based on Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics, it is stated that "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependence, which are divided into groups as attached to this Law." (in this case the Narcotics Law), in the Narcotics Law it is explained that narcotics are only intended for treatment or scientific development, and for this purpose a permit is required from an authorized official, in this case the Minister of Health;

Based on the provisions of Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, it is stated that Narcotics are classified into Class I Narcotics, Class II Narcotics and Class III Narcotics. Then regarding the detailed list of narcotics classifications, it is listed in the Attachment to the Regulation of the Minister of Health of the Republic of Indonesia Number 44 of 2019 concerning Changes to the Classification of Narcotics in conjunction with Attachment I of Law Number 35 of 2009 concerning Narcotics regarding the List of Class I Narcotics, Class II and Class III, it is stated and explained that the types of narcotics included in the list of Class I Narcotics include Opium, Cocaine, Coca Plants,

Marijuana Plants (Cannabis), Methamphetamine, MDMA (methylenedioxyphenethylamine) and so on.

As for the basis for the judge's consideration in sentencing the defendant, it is necessary to first consider the aggravating and mitigating circumstances of the defendant; Aggravating circumstances:

- a. The defendant's actions have greatly disturbed the public;
- b. The Defendant's actions do not support the Republic of Indonesia Government's program in eradicating the illegal narcotics trafficking network;
- c. The amount of crystal methamphetamine carried and controlled by the Defendant was very large and a lot, namely 35 (thirty five) kilograms;
- d. The Defendant's actions could damage the younger generation and the future of the nation;
- e. The defendant was involved in an international narcotics syndicate network that threatened the country's sovereignty; and
- f. The Defendant's actions have the potential to cause economic and social losses to the state and society.

Mitigating circumstances:

- None/Nil.

The judge's decision is based on Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

#### JUDGING:

1. Declaring that the Defendant Rinto, the Child of Rabung (Deceased) mentioned above, has been legally and convincingly proven guilty of committing the crime of "Evil Conspiracy Without Rights or Against the Law to Become an Intermediary in the Sale and Purchase of Class I Narcotics, Not Plants, Weighing More than 5 (Five) Grams" as stated in the First Alternative Charge of the Public Prosecutor;
2. Sentencing the Defendant to the death penalty;
3. Determine that the Defendant remains in detention;
4. Determined that evidence in the form of 1 (one) black Redmi 10 brand cellphone was destroyed;
5. Charging court costs to the State;

The imposition of the death penalty is not based on careful consideration, but rather the imposition of the death penalty is colored by political elements. This political element can be seen in the continued implementation of the death penalty with the view that the government will be seen as firm by continuing to enforce the death penalty. In the above case, the judge's consideration of the defendant's actions was that the actions committed were serious crimes that were organized and international in nature. The philosophy of punishment in Indonesia is more focused on rehabilitation and social reintegration efforts for perpetrators of criminal acts. Punishment also seeks to make prisoners aware to regret their actions and return them to being good citizens, obeying the law. It is clear that the application of the death penalty is not in accordance with the philosophy of punishment in Indonesia.

The application of the death penalty in the case of Rinto Anak Dari Rabung (deceased) shows that there is a criminal approach to punishment. retributive and repressive, where the primary focus of punishment is retribution for crimes deemed to be highly dangerous to public order, as well as providing a deterrent effect on the perpetrator and society. However, this approach contradicts the basic principles of modern criminal law, which place greater emphasis on social and humanitarian reintegration.

Within the framework of the legal system in Indonesia, especially after the amendment to the 1945 Constitution, the right to life is explicitly guaranteed in Article 28A which

reads: "Everyone has the right to live and the right to defend his life and livelihood." Therefore, the implementation of the death penalty is the most extreme form of punishment. still a matter of legal and ethical debate in various circles, especially in relation to respect for Human Rights (HAM).

In this decision, the Panel of Judges has based its decision on Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, which normatively allows for the application of the death penalty to perpetrators of large-scale narcotics crimes. However, from the perspective of proportionality of punishment, restorative justice, as well as the spirit of criminal law reform, the death penalty is often considered not in line with the principles of rehabilitation and correction of perpetrators of crimes.

In this context, the absence of mitigating considerations completely against the defendant shows that the judge used a black-and-white (binary) approach in interpreting the perpetrator's guilt. In fact, according to the principle of individualization of crime, every perpetrator of a crime should be seen as a whole, including their background, motives, psychological condition, economics, education, and the possibility of rehabilitation. Rejection of this approach opens the door to criticism of the imbalance between formal justice and substantial justice. In addition, in international practice, many countries have abolished the death penalty because it is considered ineffective in reducing serious crime, including drug trafficking. Amnesty International and the National Commission on Human Rights (Komnas HAM) have consistently called for Indonesia to abolish the death penalty and replace it with life imprisonment or life imprisonment with periodic evaluation.

Furthermore, the philosophy of punishment in Indonesia refers to the objectives of punishment according to integrative theory (a combination of absolute, relative, and objective theories). The objectives of punishment are not only to punish, but also to:

1. Providing protection to the community;
2. Educate and correct the perpetrator;
3. Creates a deterrent effect for perpetrators and the general public.

## **CONCLUSIONS**

The development of criminal law in Indonesia demonstrates a significant transformation in how the state views and implements the death penalty. The shift from the old Criminal Code to the new Criminal Code reflects a response to modern demands that emphasize the importance of protecting human rights and treating perpetrators of serious crimes fairly. Under the old Criminal Code, the death penalty was imposed absolutely as the primary form of punishment. Meanwhile, the new Criminal Code introduces the concept of a conditional death penalty that can be reduced through an evaluation mechanism of the convict's attitude and actions during the probationary period. Decision 32/Pid.Sus/2025/PN Pts illustrates that in practice, judges still impose the death penalty based on complex considerations, ranging from the impact of the perpetrator's actions, the threat to public order, to the sense of justice for the community. However, with the introduction of the new Criminal Code, the direction of law enforcement tends to shift toward a model that is more open to opportunities for rehabilitation and social reintegration for perpetrators, without neglecting the rights of victims. Thus, the death penalty in the new Criminal Code is no longer merely an instrument of state revenge, but rather part of a legal system that is adaptive, balanced, and places greater emphasis on humanitarian values. This shows that Indonesia does not only aim to punish, but also encourages the implementation of more comprehensive and humane justice.

**REFERENCES**

- Ahmad, A. (2015a). Criminal law on narcotics in Indonesia. Pustaka Bangsa.
- Ahmad, A. (2015b). Criminal law: Theory and practice. Pustaka Bangsa.
- Arief, BN (2015). Anthology of criminal law policies. Kencana.
- Arief, BN (2019). The death penalty and human rights protection in Indonesia. *Journal of Legal Studies*, 10(1), 85–102.
- Asshiddiqie, J. (2020). Introduction to constitutional law. Konstitusi Press.
- Hamzah, Andi. (2020). Criminal law politics and the challenges of law enforcement in Indonesia. *Journal of Legal Politics*, 12(3), 45–67.
- Harkrisnowo, H. (2019). Reform of the criminal justice system in Indonesia. FHUI Press.
- Hartawi, AM (2020). A human rights perspective on the application of the death penalty. *Journal of Human Rights and Law*, 5(1), 55–74.
- Hiariej, EOS (2016). Principles of criminal law. Cahaya Atma Pustaka.
- Kuswandi, R. (2018a). The criminal justice system in Indonesia. Harapan Publishers.
- Kuswandi, R. (2018b). The narcotics criminal justice system in Indonesia. Harapan Publishers.
- Muladi, & Arief, BN (2017). Criminal theories and policies. Prenadamedia Group.
- Mulyadi, L. (2016). Indonesian criminal law: Theory and practice. Citra Aditya Bakti.
- Pangaribuan, LMP (2020). Criminal law and human rights. Kemang Library.
- Rahmat, D. (2025). Introduction to national criminal law. PKBH Unsuraya.
- Sahetapy, JE (2016). Death penalty. Institute for Community Research & Advocacy.
- Soekanto, S. (2019). Principles of Criminal Law. Rajawali Pers.
- Sofian, A. (2021). Implementation of human rights in the criminal justice system in Indonesia. *Journal of Legal Reform*, 15(2), 33–50.
- Susilo, D. (2014). Analysis of criminal acts from a criminal law perspective. Erlangga.
- The 1945 Constitution of the Republic of Indonesia.
- Law Number 1 of 1946 in conjunction with Law Number 1 of 2023 concerning the Criminal Code.
- Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).
- Wahyudi, B. (2016). Basics of Indonesian Criminal Law. Gramedia Pustaka Utama.
- Wijaya, B. (2017a). Criminal law and narcotics study. University of Indonesia Press.
- Wijaya, B. (2017b). Study of criminal law and criminal acts. University of Indonesia Press.