



Comparative Legal Analysis of The Death Penalty Provisions In Indonesia: The State Of Pancasila Law's Perspective (Case Study of Law Numbers 1 Of 1946 And Law Number 1 of 2023 Concerning The Criminal Code)

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Abstract. The death penalty is one tool used by law enforcement to deal with significant crimes. Its purpose is to deter criminals from committing similar crimes in the future and to make those who have not engaged them feel fearful of doing so. Following the reforms, the Republic of Indonesia's legal politics evolved into one that supports democracy. The surface issues concern how the death sentence laws are seen from the standpoint of the Pancasila legal state. This study aims to compare regulatory policies regarding the death penalty from the perspective of Pancasila's legal system. Normative juridical research is the analytical tool employed to explore this issue. The findings of this study, specifically the death penalty clauses included in Law Number 1 of 1946 and Law Number 1 of 2023 governing the Criminal Code, contain many different things that were initially the basic criminal death penalty, which were changed to special criminal penalties. There are also several relationships and comparisons between certain crimes because the principle of legality is still in effect. In the Indonesian context, the view of life is Pancasila, a joint agreement or consensus between the majority of the Indonesian nation.

Keywords: death penalty provisions, Pancasila perspective, Indonesian penal code

INTRODUCTION

The death penalty is part of the means of law enforcement in tackling severe crimes and to provide a deterrent effect for the perpetrators of crimes, against the convicts themselves so as not to commit crimes again (preventing the repetition of criminal acts), Post-reform, the legal politics of the Republic of Indonesia, transformed into a country that more upholds the enforcement of democracy. The resulting legal products increasingly guarantee democracy in state life and the protection of human rights. Some of the post-reform legal products produced include the Amendment to the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning Human Rights

Courts, ratifying the provisions of *the International Convention on Civil and Political Rights*, in the future referred to as "ICCPR," namely the International Covenant on Civil and Political Rights) which highly respects the right to life, later promulgated into the International Convention on Civil and Political Rights. Law Number 12 of 2005 concerning the International Convention on Civil and Political Rights Ratification.

One of the impacts and polemics that occur among legal experts in Indonesia today is related to the application of the death penalty that is still in force in Indonesia. The right to life, as stipulated in the constitution, is a right that cannot be reduced by any reason (*Non-Derogable Right*). The Constitution guarantees the right to life, which cannot be reduced for any reason as part of the guarantee of human rights as stipulated in the second amendment to the 1945 Constitution. Article 28 I of the 1945 Constitution states:

“(1) The proper to live, the correct not to be tortured, the proper to freedom of thought and heart, the correct to religion, the correct not to be subjugated, the proper to be recognized as an individual sometime recently the law, and the proper not to be arraigned based on retroactive law are human rights that cannot be decreased beneath any circumstances.”

The talk of lawful specialists related to the questioning of the usage of the passing punishment in Indonesia, which is related to ensuring the Proper Life regulated within the structure, maybe ensuring the requirement of human rights as one of the characteristics of a majority rule nation. The slant in nations that maintain majority rule government and ensure human rights has annulled and deserted the application of the passing punishment. As of December 31, 2021, it is recorded that 2/3 of nations within the world have nullified the passing of punishment in their laws. In hone, the number of nations included within the abolitionist category against the passing sentence has come to 144, with a breakdown of 108 nations that are abolitionist for all wrongdoings, eight nations that are abolitionist for conventional violations as it were, and 28 nations that execute a ban on the passing punishment (abolitionist in hone). Compare that with the number of retentions nations, which aggregates 55 nations. These insights show that the inclination of world civilization nowadays is to regard the right to life over other rights, particularly the passing punishment.

LITERATURE

Legitimate specialists contend that the passing punishment, in expansion to demonstrating an infringement of the non-derogative Right to Life, which is ensured by the Structure, has two fundamental shortcomings, precisely:

1. There is no perfect criminal system, and there is still the potential for the fallibility of the criminal justice system; historically, this has happened in the Sengon and Karta cases and the Devid and Kemat cases in East Java. Primarily related to the death penalty, it is hazardous because it is *irreversible*. It cannot be changed again when the execution has been carried out.
2. The fact and data that the death penalty does not succeed in effectively stopping crime. From various studies conducted in many countries, the crime does not occur not because of fear of the death penalty but rather because of the fear of being caught. In the case of narcotics in Indonesia, for example, the development of the case shows an increase even though there is already a death threat.

In expansion, there are issues with executing the passing punishment in Indonesia concerning the execution time. The direction of the passing punishment in Indonesia does not have any rules and provisions that regulate the time of execution, and it is not regulated regarding the maximum time limit related to execution. In Law Number 2/PNPS/1964, it is only regulated regarding who has the right to determine the time and place of the execution of the death penalty, with no regulation regarding the time for the execution of the death penalty. This is then considered a violation of human rights. Many death row inmates have to wait years or even decades until they are finally executed. Based on these problems, it becomes a problem related to implementing the death penalty.

An example of the case of Bahar bin Matar, an inmate related to the crime of robbery, murder, and rape who was sentenced to death on March 5, 1970, by the panel of judges of the Tembilahan Riau District Court (PN). The verdict has permanent legal force, but the person concerned died in custody status on August 12, 2012, after more than 43 years in custody. Even though there has been a decision that has permanent legal force, the Attorney General's Office has not been able to execute until Bahar meets his death in the detention house. Bahar was imprisoned in the Cipinang Jakarta Correctional Institution (LP) until 1983 and then transferred to LP Batu, Nusakambangan Island, Cilacap, until he died. The same thing was also experienced by a Nigerian death row inmate, Gap Nadi alias Papa, who died at Cilacap Hospital on February 4, 2013, due to diabetes. Gap Nadi has been living in the detention center since 2008.

Apart from the two, there are still cases of Sumiarsih and Sugeng. This mother and child were proven to have killed the family of Lieutenant Colonel Purwanto on August 13, 1988. The

Surabaya District Court sentenced the death penalty through decision Number 80/Pid.B/1988. Sumiarsih and Sugeng had served nearly 20 years in prison before they were finally executed. There are still many inmates who experience the same thing, even though, in the law, legal certainty is needed for all parties, including death row inmates. If the delay is based on rights that are not legally strong and becomes protracted until the death row inmate becomes old or even dies in prison, then, in fact, the government has implemented *a double punishment* that is very detrimental to the convict, which indirectly contributes to the consumption of the state budget.

The implementation of the execution of the death penalty against the convict with the uncertainty of the time for execution makes the convicts feel tormented and persecuted, both physically and mentally. This can potentially be categorized as a crime against humanity that violates human rights. Based on the explanation of article 9 letter f of Law Number 26 of 2000 concerning the Human Rights Court, related to torture as part of crimes against humanity states that:

"What is meant by "torture" in this provision is the intentional and unlawful infliction of severe pain or suffering, either physical or mental, on a prisoner or a person under supervision."

In this case, the state indicates that it causes torture, primarily psychological and mental torture, against the convicts. It should be as a legal state based on Pancasila that the concept of the death penalty should depart from the idea of mono-dualistic balance. This idea is oriented towards balancing the public interest or community protection and paying attention to individuals' interests or security (convicts). That is, in addition to protecting the death penalty community, it also pays attention to the interests of the convicts in order to achieve the value of legal objectives, namely justice, usefulness, and legal certainty.

In the development of the polemic on the application of the death penalty in Indonesia in 2007 in connection with the application of the death penalty in narcotics crimes (Law No. 22 of 1997 concerning Narcotics), an application for judicial review in the case of narcotics crimes was submitted by the petitioners who were undergoing trial proceedings at the Tangerang District Court and the Denpasar District Court who had been sentenced to the death penalty. The main reason that the application of the death penalty is contrary to the constitution, namely the right to life guaranteed by the constitution as stipulated in article 28 A and article 28 I of the 1945 Constitution to the Constitutional Court and registered in case No. 2-3/PUU-V/2007. Upon the request of the petitioners, the Constitutional Court on October 30, 2007, read its decision with the following ruling:

1. Declaring that the applications of Petitioner I and Petitioner II in Case No. 2/PUU-V/2007 are rejected in their entirety;

2. Declaring that the applications of Petitioner III and Petitioner IV in Case No. 2/PUU-V/2007 are inadmissible (*niet ontvankelijk verklaard*); and
3. Declaring that the Application for Case No. 3/PUU-V/2007 is inadmissible (*niet ontvankelijk verklaard*);

Although the Constitutional Court rejected the petitioners' application in case No. 2-3/PUU-V/2007, the author notes several exciting things in the decision, namely:

1. The Constitutional Court Panel that examined the application for *judicial review* in case No. 3/PUU-V/2007 consisted of 9 (nine) members, of whom 4 (four) out of 9 (nine) members declared a different decision (dissenting opinion) regarding both the subject matter of the material test and the applicants' legal standing.
2. In the consideration (*ratio dices*) of the panel of judges in deciding the case, the panel of judges gave legal views and opinions, which is a breakthrough in consideration of *judicial review* law where this is the beginning of a bright spot on the polemic on the application of the death penalty where the provisions of the ICCPR are also considered, the panel of judges in their legal opinion in considering their decision thinks for the future It is necessary to make policy changes on the application of the death penalty in the context of updating the national criminal law and harmonizing laws and regulations related to the death penalty, both related to the formulation, application, and implementation of the death penalty in the criminal justice system in Indonesia. Therefore, both directly and indirectly influencing policy or legal politics in Indonesia on the application of the death penalty.

This aligns with the increasingly democratic configuration of legal politics after the reform, which produces responsive legal products in the Republic of Indonesia. In the context of updating national laws and harmonizing laws and regulations related to criminal law, the House of Representatives ("**DPR**"), as a legislative body, has sought to update the provisions of the Criminal Code (now referred to as "**the Criminal Code**"). As a policy of criminal law reform that is appropriate and under the needs of the State of the Republic of Indonesia, then on December 6, 2022, the House of Representatives of the Republic of Indonesia passed the Criminal Code Bill into law. Furthermore, the Government of the Republic of Indonesia has ratified and promulgated through Law No. 1 of 2023 concerning the Criminal Code on January 2, 2023 ("**Law No.1/2023**"), which is contained in Statute Book of the Republic of Indonesia No. 1 of 2023, Supplement to Statute Book of the Republic of Indonesia No. 6842. However, the enactment of Law No.1/2023 will take effect for 3 (three) years from the date of promulgation, namely January 2, 2026. Thus,

the Criminal Code still in force today is the version of the Dutch colonial heritage Criminal Code, which was ratified based on Law Number 1 of 1946.

One of the things quite interesting in Law No. 1/2023 and its comparison with the Criminal Code is related to the determination of the principal crime, especially the death penalty. In the current Criminal Code, the penalty is regulated in Article 10 of the Criminal Code, which states that the death penalty is the primary criminal sanction with the first order (this order means the arrangement is based on the severity of the criminal sanction). In contrast, the death penalty regulation in Law 1/2023 is no longer a type of principal crime but only as an alternative crime for specific criminal acts specified in the Law. This arrangement is contained in Article 98 of Law No. 1/2023, stating that this crime is a last resort to protect the community.

The death penalty was removed from the principal penalty. It became an alternative special penalty (exceptional), according to Barda Nawawi Arief, a member of the Criminal Code Bill Drafting Team, during a public discussion on the new Criminal Code Bill in Jakarta on November 7-8, 2000 based on three main thoughts, namely:

1. The reason for passing punishment isn't the essential implication of directing, arranging, and progressing people or society. The passing punishment is, as it were, of exemption. So the passing sentence is compared to an implication of amputation or surgery within the field of medication, which, in quintessence, is additionally not the essential medication but, as it were, the final medication.
2. The concept of the passing punishment as an interesting wrongdoing leaves the thought of mono-dualistic adjustment. This thought is situated towards adjusting the open interest or the security of society and considering the interface or security of people. This implies that in expansion to securing the community, the passing punishment too pays consideration to person interface, such as the arrangement for delaying the execution of the passing punishment for pregnant ladies and rationally sick individuals (Article 81, section (3)). Another illustration is the plausibility of delaying the execution of the passing punishment, also known as the term "conditional passing punishment," with a probation period of 10 a long time (Article 82 section [1]).
3. The support of the passing punishment, indeed despite the fact that it is an uncommon wrongdoing, is additionally based on the thought of dodging requests or open responses that are vindictive or extra-legal execution. This implies that the death punishment arrangement within the Law (UU) aims to avoid open feelings.

From the depiction that the creator has passed on over, there are beautiful critical changes related to criminal law arrangement, basically associated with the direction of the

passing punishment law between the current Criminal Code ("Law No.1/1946") and the arrangements of the passing punishment arrangement in Law No.1/2023, both from the conceptual, philosophical and application levels. This truth shows the significance of this ponder to get clarity concerning the reason, goals, and establishments of the passing punishment surveyed from the juridical perspective, the passing punishment arrangement in Law No. 1/2023, by comparing the approach within the direction of the passing sentence based on the current Criminal Code.

METHOD

The strategy of information collection in composing this law is library inquiry. This method is carried out to get auxiliary information, specifically through the think about lawful materials that are authoritative on the issue being examined, comprising of laws and controls, books, investigations comes about, papers, the web, word references, theses, and composing or notes = notes related to this lawful composing.

DISCUSSION

Indonesia could be a state of law (*rechtsstaat*) based on Pancasila and the 1945 Structure. It isn't a state of control (*machstaat*) as indicated in Article 1, section (3) of the 1945 Structure (Fourth Correction). A state of law is a nation that maintains human rights and ensures each citizen's position within the law and the government without particular cases.

Pancasila is a philosophy of the Indonesian nation that contains the Indonesian people's view of life, which consists of systematic, fundamental, and comprehensive values of truth. Pancasila, in all actions, is believed to be the philosophy of the nation's identity, which is a characteristic and personality that other nations do not have. Pancasila, in all actions, is believed to be the philosophy of the nation's identity, which is a characteristic and personality that other nations do not have. The birth of the Indonesian state is based on the principles of life and the nation's ideals, which are fully formulated in Pancasila or other words, Pancasila is referred to as the fundamental norm of the state (*Staatsfundamentalnorm*), which is the basis for the formation of the constitution (*Staatsverfassung*). Notonegoro characterizes Pancasila as a logic and philosophy of the state. Agreeing with Muhammad Yamin, within the Sensekerta dialect, panca implies five, sila implies joint, and the guideline or five essentials are rules for essential and significant behavior, whereas Ir. Soekarno deciphers Pancasila more broadly, specifically as the soul and reasoning of the Indonesian country.

The ontological premise of Pancasila is that human creatures have a supreme mono pluralist quintessence, precisely the nature of human creatures as animals made by God, which are contained within the five statutes which gotten to be an indistinguishable unit, and have a relationship with the epistemology of Pancasila as a source of information for Indonesian individuals in carrying out the life of the country and state and related to axiology, Pancasila is the values contained within the statutes of Pancasila counting the elemental values of holiness that the esteem of humankind, the esteem of unity, the esteem of the individuals, and the esteem of Equity which is additionally an indivisible unit.

Moreover, within the context of positive law within the Republic of Indonesia, alluding to article 2 of Law No. 11 of 2012 concerning the Foundation of Laws and Controls, which was final corrected based on the moment correction based on Law No. 13 of 2022, it is expressed that Pancasila is the source of all sources of state law. Subsequently, the lawful result is that all rules and controls, counting the arrangements of criminal law in common and the arrangements of the passing punishment in specific, must be subject to and must not negate Pancasila as the source of all sources of state law.

Pancasila, as the source of all sources of Pancasila law, could be a rule for the Indonesian nation in carrying out state life to realize the country's standards. The 1945 Structure is the crystallization of the esteem of Pancasila, the soul of the legal arrangement, which is continuously maintained and executed reliably, as expressed within the preface to the fourth section of the 1945 Structure. The usage and application of the 1945 Structure within the life of the country and state must not be opposite to Pancasila since, in Pancasila, the course and beliefs of the Indonesian government are expressed so that Indonesia is said to be a state of Pancasila law. Pancasila, as a national logic, can be a channel for all lawful activities taken so that the sanctioning of directions or the application of a lawful arrangement does not negate and can be connected in agreement with the values of Pancasila.

Pancasila provides a view on the arrangement of the death penalty for perpetrators of corruption crimes based on the precepts of Pancasila, which are hierarchical and pyramidal, which means that the precepts of Pancasila are an inseparable unit that has a relationship with each other, namely:

1. The first precept: The One Godhead,

The primary statute of "The One Godhead" sees the passing punishment arrangement, one of which is for corruptors, as an unfeeling takeover of God's specialists

by people. God's specialist, in this case, is to require or disavow human life, so the meaning of the statute of "The One Godhead" is almost the usage of equity and the application of the passing punishment as an exertion to manage the state of law in Indonesia must come from the quintessence, information of divine values. The passing sentence is closely related to the classical school or outright hypothesis in criminal law, which, as it were, concerns revenge and obstacle impacts to the culprit without considering whether the passing punishment ensures open arrangement and whether the passing punishment is opposite to human rights.

The Indonesian country maintains human rights, so it is improper for a person's right to life to be denied, indeed in case the individual may be a convict. The opposition to the passing punishment is in line with the pith of the statutes of Pancasila, which may be a unit, specifically the One Godhead, which could be a Godhead that's sympathetic, reasonable, and civilized, adoring each other, and excellent conduct that restrict all shapes of degrading the nobility and nobility of human creatures as the noblest animals made by God. Even though a few contend that the application of the passing punishment in Indonesia is reasonable since it is by the concept of Islamic law, the contention for whether or not the passing sentence is worthy of concurring with Islam goes back to the philosophy of the Indonesian state, which is based on Pancasila, not based on a specific religion.

God's sovereignty means that the supreme power is in God's hands. Humans use their reason (ratio) as the executor of God's sovereignty. They are obliged to carry out the values of the law that come from God (irrational) as the flow of natural laws that state that God's law is universal and eternal or it can be said to be a natural law, namely humans are governed by objective norms that are outside the human world.

The implementation of the school of natural law carried out by humans through the administration of the state based on the value of God in the material sense includes the form of the state, the purpose of the state, the state system, and the order of the law. In contrast, the value of God in the spiritual sense is the morality of the nation and state, as well as the morality of the state administrator, in this case, the morality of law enforcement officials. The judiciary is carried out based on the One Godhead so that in every court decision, especially the decision of a criminal case as per Article 197 paragraph 1 and paragraph 2 of the Criminal Code, it is mandatory to include the irah "For Justice Based on the One Godhead" and if it is not fulfilled as this formulation or irah, it will result in a null and void decision. The judiciary carried out in Indonesia has been under the first precept of

Pancasila, and it's just that related to the death penalty. There is a conflict with the value of God. Namely, life comes from God, and death is the authority of God, so humans do not have the right to take the lives of others even because the state of the country is in a dangerous state or a state of disaster so that the legal provisions related to the death penalty are not applied adequately in Indonesia because it is contrary to the fundamental rights of humans as God's creation. The Indonesian nation recognizes the birth of the Indonesian state by God's grace so that the life of the country and state is inseparable from God's power and greatness. As a nation that believes that human life and death are God's sovereignty, the application of the death penalty should not be applied to perpetrators of crimes in general and to corruptors in particular. The application of the death penalty is contrary to the first precept of Pancasila because the death penalty is a cruel punishment, so in the future, it is necessary to replace the death penalty with a life sentence.

2. The second precept: Fair and civilized humanity;

The second precept, "Fair and civilized humanity," is contrary to the death penalty provisions for corruptors because this second precept is based on and imbued with the first precept, namely "The One Godhead." Humans are naturally creatures created by God, so the causal relationship between humans and God is closely related. God created man for a specific purpose, which is believed in every religious teaching of human nature. According to this second precept, the Indonesian nation upholds human values from God, namely loving fellow humans and having morals, reason, and conscience. Human beings are prominent supporters of the state because the state is a humanitarian institution, so the essence of human beings determines the nature of the state.

The dignity of the Indonesian nation is determined by its human beings. The essential elements of human nature consist of the body and soul, which consist of intellect and taste. They will (physical and spiritual). The second is the nature of human nature, namely human beings as individual creatures and human beings as social beings, and the third position of human nature is independent creatures and God's creatures. The idea of the Indonesian state is to realize a just and civilized Indonesian people. The essence of justice and civility contained in the second precept is under the mono pluralist nature of man, namely being fair to a man with himself, fair to fellow human beings, and to a man with his God.

3. The third precept: the unity of Indonesia

The precept "Unity of Indonesia" wants the Indonesian people to unite against all forms of violence against humans. The third precept has a solid systematic relationship with the first and second precepts because the precept of unity proceeds from the belief in the greatness of God in Indonesian people so that Indonesian people believe that the implementation of the state will be vital if their people both struggle and unite to uphold human rights based on divine values providing insight and understanding of legal awareness and legal order. The death penalty for corruptors is one of the weakening of human rights to life. The death penalty does not reflect an attitude that upholds human rights and divine values.

The state should realize that the provisions of the law that regulate the death penalty for criminals are not a good step in upholding the purpose of criminal law because the threat of the death penalty against criminals still does not prevent people from being afraid of committing criminal acts, it can still be carried out by carrying out a wiser punishment by paying attention to divine values and human values. Law enforcement based on the application of heavy sanctions will not be effective if it is not supported by countermeasures against other aspects or factors that determine the birth of the criminal act. One of the non-legal aspects in supporting that must be done by the state is by uniting to improve the morale and understanding of Indonesian people in instilling and stimulating the anti-corruption spirit based on Pancasila, namely the precepts of God and the precepts of humanity to create awareness and legal order, because the occurrence of corruption crimes so far the most significant factor is in human beings themselves, namely lust and greed, Just like the classical school of criminology that states that the factor of people committing crimes is contained in the perpetrator which is influenced by intelligence and rationality which are fundamental characteristics of humans.

4. The fourth statute:

The fourth statute, "Popular government driven by shrewdness and shrewdness in agent pondering," implies that the administration of the Indonesian individuals is without a doubt carried out based on the cunning and wisdom of Indonesian people who are dignified and have high standards of humanity according to human nature in the second precept and who always adhere to the divine values that exist in the first precept of Pancasila. All decisions taken in the administration of the Indonesian state are carried out wisely and wisely using the procedure of consultation and representation while still paying attention to the essence.

Humans are creatures of God, so the Indonesian nation's unity remains strong and always maintains its existence. The death penalty provisions for corruptors should be studied more deeply by deliberating to reach a consensus, still guided by human nature and divine values, for the benefit of the Indonesian people and to create peace. Criminal law is the last resort in resolving conflicts and is no longer retaliatory but rather toward recovery. Within the criminal equity framework in Indonesia, judges making choices to sentence convicts to pass are not simple cases since these activities break the values of human life and are opposite to Pancasila, so it is trusted that the state, in this case, spoken to by the government and the House of Agents can audit the definition of laws that control the passing punishment or the Sacred Court as the gatekeeper of the 1945 Structure and Pancasila in testing the law carried out within the Protected Court, it ought to be carried out with the spirit of Pancasila, since the 1945 Structure may be an unmistakable appearance of Pancasila.

5. Fifth statute:

Social equity for all Indonesian individuals. The fifth statute, "Social equity for all Indonesian individuals," is shown by applying the law carried out by law requirement to all Indonesian individuals. Law enforcement should attach importance to legal certainty and consider the side of justice and utility. This fifth precept emphasizes justice based on the principles of Pancasila, which has a unity that cannot be separated from other precepts, namely justice based on Godhead, humanity, unity, wisdom, and wisdom in representative deliberation so that the justice that must be achieved by law enforcement officials, in this case judges, is not justice based on theories of justice that come from outside the Indonesian nation but justice that reflects the identity of the nation Indonesian. The purpose of the Pancasila legal system in the context of conflict is more towards peace based on the principles of deliberation and consensus, while in the context of legal certainty and justice must not conflict with each other but must be harmonious to provide legal benefits for the Indonesian people, so that based on the legal ontological aspects of the Pancasila legal system prioritizes the rights of the people and the rights of the state to complement each other harmoniously to achieve justice in peace along with certainty and usefulness.

The death penalty against corruptors is contrary to Pancasila, so the application of the death penalty provisions does not reflect justice based on Pancasila, so it is fair and wise if corruptors are punished in inhumane and more dignified ways without having to

kill or take their lives of the convicts. The death penalty does not reduce corruption crimes that occur in Indonesia, as evidenced by the fact that there are still many corruption cases every year.

Referring to the opinion of J.E. Sahetapy, the purpose of criminal law is not to avenge the evil deeds committed by the perpetrators. The basis is based on "*Ius Poenale*" (criminal law), representing the victim to settle the consequences of the crime, and the state has the right to punish "*Ius Puniendi*." Therefore, the state is obliged to provide maintenance of order in society and provide a sense of security.

To ensure the rights of each citizen, the Indonesian government, as a lawful state based on Pancasila, should not be connected in Indonesia. The benefits and sense of equity as one of the legitimate targets of the passing punishment arrangements ought to be looked into. Will the passing punishment guarantee the fulfillment of a sense of equity in society since criminalization isn't, as it were, almost vindicate itself? The logic in criminal law itself is additionally really to humanize people. In its application, it does not pay consideration to the esteem of the criminal law, which only aims to fulfill the want for exact retribution by utilizing the implies of criminal law; at that point, within the enforcement of criminal law, it has not satisfied its work. Particularly within the passing punishment, since the passing punishment may be an exceptionally awful law. Once the passing sentence is carried out against the convict, it'll not be able to be restored if unused proof is found that states that the convict is guiltless. Subsequently, the passing punishment should be canceled to guarantee equity for the convict and the victim's family.

Pancasila is the basis of every legal regulation, which contains a lot of values in life and the nation and state. Jeremy Bentham stated that the death penalty should not be imposed or used if it is *groundless, needles, unprofitable, or inefficacious*. The application of the death penalty is indeed required to have a very high sense of caution because this punishment concerns human life, which cannot be returned if it has been revoked. Also, the application of this punishment should be based on and reflected in depth on its benefits, which, of course, is expected to have justice for all subjects involved, both the victim and the perpetrator himself. In applying punishment for the perpetrator of a criminal offense, the benefits that can be created after the sentence is enforced should also be considered. In this case, the author wants to observe the relationship between the victim's family, the perpetrator, and even the perpetrator's family, who are destroyed by the actions committed by the perpetrator of the crime itself. It is hoped that the imposition of criminal punishment

can also provide improvements to both parties. Therefore, the provision of criminal law is not only about retaliation but also provides overall improvements for the victim, the victim's family, the perpetrator, and the perpetrator's family.

As a country based on Pancasila as the source of all sources of law, it is appropriate to apply progressive law, which is in line with the Pancasila Paradigm, which prioritizes the principle of "law for humans and humans for law." the law is expected to function to serve the conscience of humanity. The function of law to serve the conscience of humanity is to return the law to the lines of morality, where the applicable and future laws must be in a series of interconnected moral values. Indeed, it is undeniable that the stigma that develops in society, the death penalty is the heaviest sanction and provides a deterrent effect to the convict, which aims to be corrective as an emotional vent and revenge. Indeed, the author admits that there is an element of suffering in the imposition of punishment. Still, the suffering imposed is to free the perpetrator from "sin" and mistakes, not for the sake of the suffering that the perpetrator must experience so that he becomes afraid or feels revenge. Eliminate individual convicted criminals' lives by negating noble values and dignity. Evil is as old as the presence of humans. Even the death penalty can never abolish the existence of a crime. The desire of the people to live a free national life based on the blessings and grace of God Almighty, who prioritizes the implementation of state responsibilities in a virtuous and dignified manner, does not have to make the threat of the death penalty a way to eliminate certain crimes. Countermeasures against specific perpetrators of crimes are carried out in a dignified manner that shows the nobility of the nation and state in line with the Pancasila paradigm.

More than that, there are legal principles in Pancasila values, which are related to the provisions of the death penalty with the Pancasila paradigm, as follows:

1. The principle of divinity can take the form of an implementation that aims to bring the perpetrator of criminal acts closer to the path God wants by the beliefs he adheres to. Considering that humans do not have the right to end someone's life even if that person makes a mistake. Only God has the right and authority to determine the end of a person's life.
2. The Principle of Humanity, in implementing this principle, must be prioritized and upheld with a sense of humanity. Therefore, implementing this principle can be in the form of compensation for losses as collateral for the convicted of crimes for the loss of life, to continue life for the victim's family. It can also be in the form of

an obligation to finance treatment, funerals, and funeral costs and not to have a problem with financial resources (for convicted criminals of crimes for loss of life). Provision of compensation for victims of narcotics and psychotropic trafficking in terms of financing in the form of rehabilitation (for convicted narcotics and psychotropic traffickers). Return of corruption money to the state and confiscation of assets by the state (for corruption convicts). In this case, it is felt that the fulfillment of humanitarian principles is balanced for both perpetrators and victims without the need for the death penalty.

3. The principle of unity that can be implemented through the creation of reconciliation and the act of restoring good relations that have been destroyed as a result of the criminal acts that have been committed, considering that crime as a means of "ultimate remedium" ends conflicts with the principle of deliberation first that is interrelated and fair. Reconciliation should be conducted in an open session to avoid unwanted pressure that can destroy balance and justice. In this case, it can also provide authority and rights for the state in the intermediary of judges to exercise control so that the interests of the community in a broad sense and the state can be protected.
4. The Principle of Democracy Led by Wisdom in Deliberation/Representation, in its application, prioritizes the people's interests rather than individual interests to avenge their revenge. In a comprehensive sense, the people uphold the values of deliberation, justice, and benefits. Settlement can be done through deliberation that sees the element of Godhead and wisdom, namely conscience.
5. The principle of Social Justice can be realized by balancing the accountability of criminal offenders. Moreover, the basic principle in criminal law is to humanize humans—not only to the victims but also to the community, the state, and God through the obligation to carry out religious provisions.

Through this adjustment, it is trusted that each ummah and society's goodness will be realized while avoiding more misfortunes to the community and the nation and remembering that in every respect of life, country, and state, Pancasila could be a basic component for annulling the passing punishment in Indonesia.

In this manner, it is fitting for the state of the Republic of Indonesia to translate a lawful run of the show carefully to supply general benefits. The meaning of criminal law isn't as it were as implies to vindicate people but must give improvement to form the great

as an entire, in line with Pancasila, which is the establishment of life, country, and state, so that the passing punishment ought to be annulled in Indonesia checked on from the point of view of Pancasila values which incorporate life, state, and country.

CONCLUSION

The conclusion drawn from the examination and dialect is that the Arrangements for the Inconvenience of the Passing Punishment based on the Reasoning of Pancasila within the Republic of Indonesia is Pancasila, a collective assertion or agreement of the more significant part of Indonesian individuals. The application of the passing punishment is debilitated, on the other hand, as an obstruction impact for culprits of criminal acts and for those who have not committed a criminal act. With the section of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, there's a breakthrough that the passing punishment is not an essential wrongdoing but a specific wrongdoing that's debilitated then again or gets to be a conditional passing punishment by being given a probation period of 10 (ten) years. As a nation that has the understanding of Pancasila that human life may be a blessing from God, at that point, the proper specialist to require human life is God, and the State isn't authorized to force the passing punishment on each citizen since the state must ensure each Indonesian citizen.

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