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PROVISIONS OF THE DEATH PENALTY IN THE THEORY OF PUNISHMENT FROM THE PERSPECTIVE OF NATIONAL LEGAL OBJECTIVES

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Abstract: The death penalty has been implemented in Indonesia since January 1998, with provisions stated in the Penal Code (KUHP) and regulated in Article 10 and Article 100 of Law No. 1 of 2023. The history of the death penalty in Indonesia can be traced back to 1808 when it was introduced as a means to achieve political stability and uphold the development agenda. In line with the evolution of society and law, the government has retained the death penalty in the Penal Code to provide a stronger deterrent effect against legal disturbances. The imposition of the death penalty for certain criminal acts in the Criminal Law is expected to prevent individuals from committing such crimes. In this perspective, the death penalty aims to achieve state stability in accordance with national goals, including the element of justice. The death penalty is regulated by law as an obligation stemming from the Pancasila legal source. Pancasila is the foundation of the Indonesian state and serves as the fundamental norm with the highest position in the hierarchy of legal norms, including criminal law. Therefore, in deciding the death penalty, national legal considerations must be taken into account to ensure that the sanction provides justice, certainty, and benefits for national law and Indonesian society. In the theory of punishment embraced by the Indonesian people, which is a combined theory incorporating absolute and relative elements, the judge's consideration in determining the death penalty becomes sharper in assessing the aggravating factors of the perpetrator in a criminal case. This combined theory recognizes the element of "retribution" in criminal law but also acknowledges the preventive and rehabilitative aspects inherent in any punishment. The death penalty is only applied in cases of serious crimes in accordance with the provisions of the law, thus the combined theory emphasizing retribution becomes the main consideration in deciding the death penalty, although other aspects of the perpetrator in this context still refer to the hierarchical goals of national law.

Keywords: death penalty, legal goals, theory of punishment

I. INTRODUCTION

The term "criminal" is a specific term that refers to the sanctions applied in the context of criminal law. It is used to refer to legal actions involving the imposition of penalties or punishments on individuals who commit violations within the realm of criminal law. These sanctions can include various forms of punishment, such as imprisonment, fines, probation, or other penalties determined by the criminal justice system. Thus, the term "criminal" signifies the close connection between serious legal violations and the legal responses applicable in the context of criminal law (Widodo, S, 2017).

According to Roeslan Saleh, "criminal" is the response to an intentional offense inflicted by the state on the offender (Roeslan Saleh, 1983). Criminal punishment is retaliatory in nature because it is only imposed on offenses, which are voluntary acts, but the purpose of criminal punishment is not retribution but rather the protection of societal well-being. According to Vos (Andi Hamzah, 2005), "criminal" serves as a general preventive effort, not only specific to the convicted, because if someone has been to prison, they will not be too afraid anymore as they already have the experience. The third combined theory considers retribution and the defense of societal order as the objectives of criminal punishment.

Legal sanctions are regulated by laws or other legislative regulations. Legal sanctions govern the methods or procedures of law enforcement, the parties responsible for enforcement (law enforcement agencies), and the severity of the sanctions imposed (Mochtar Kusumaatmadja, 1986). Legal sanctions are the clearest form of state power in fulfilling the obligation to comply with the law. The clearest form of legal sanction is evident in criminal law. In criminal cases, individuals (suspects or defendants) face the state, which represents the public interest and is represented by the public prosecutor. The application or imposition of sanctions can result in the restriction of freedom (imprisonment), confiscation of assets (seizure), defamation of reputation, and even the death penalty for an individual. The use of criminal law as a means to deal with crime is done through criminal law policies in the form of legislation. Regarding these objectives, criminal punishment has the following goals: 1. Preventing all violations; 2. Preventing the most serious violations; 3. Reducing crime; 4. Minimizing losses/costs. Essentially, criminal punishment serves as a form of protection for society and a response to legal violations.

Furthermore, Roeslan Saleh also stated that criminal punishment has another aspect, namely as a means to create harmony and as a process of education so that someone can be reintegrated into society (Roeslan Saleh, 1983). Criminal sanctions are a crucial legislative policy action, especially in determining sanctions in criminal law, because their existence provides direction and consideration regarding what should be the appropriate penalties or criminal actions. In Indonesia, the implementation of the death penalty began on January 1, 1918, based on the Wetboek Van strafrecht (Criminal Code) established by the Dutch colonial government through K.B.v. October 15, 1915, No. 33. Currently, the death penalty has been nationalized through Law Number 1 of 1946, which covers offenses found in Article 10 of the Criminal Code, as well as offenses regulated in other laws. The review of the death penalty has been explained in the explanatory memorandum (Memorie van Toelichting), stating that the state has the right to enforce all these regulations, including the death penalty, with the aim of fulfilling its obligations in maintaining legal order and public interest (A. Hamzah and A. Sumangelipu, 1983).

The death penalty is defined as a form of distress or torture that causes suffering to human beings and goes against the norms of human life. The death penalty is closely related to criminal punishment and penalization. Substantively, the death penalty is one of the forms of punishment imposed on offenders, particularly for serious offenses. The death penalty is considered a cruel and merciless form of punishment. In essence, the purpose of criminal punishment is to prevent crimes and violations. The death penalty itself is intended as a fair criminal sanction for serious criminals. The implementation of the death penalty in the Indonesian Criminal Code is a legacy from the Dutch East Indies, enforced based on the principle of concordance. In general, the death penalty is defined as a form of distress or torture that inflicts suffering on human beings and violates norms that are contrary to human life, where the death penalty is closely related to criminal punishment and penalization.

According to Muladi (1992:25), the goals of punishment are as follows:

1. Preventing the occurrence of criminal acts by upholding legal norms to maintain public safety.
2. Rehabilitating convicts through rehabilitation programs to transform them into good and productive individuals.
3. Resolving conflicts arising from criminal acts, restoring balance, and fostering a sense of peace within society.
4. Alleviating the guilt of the convicted individuals, taking into consideration theories of punishment that involve specific prevention approaches and a perspective of societal protection.

Furthermore, Prof. Roeslan Saleh stated that the death penalty is a radical attempt to eliminate individuals who cannot be rehabilitated anymore. With the existence of the death penalty, the obligation to maintain them in costly prisons is also eliminated. It also removes our fear of the possibility of escaping from prison and committing crimes again in society (Roeslan Saleh, 1978).

II. METHODE

This research utilizes an empirical juridical approach, which is a research method that combines legal analysis with the collection of empirical data. This approach involves considering the normative aspects of the law, such as principles, norms, rules from legislation, court decisions, agreements, and doctrines, while also taking into account the empirical facts related to the researched issue. By employing this approach, the

research aims to explore and analyze existing legal data while gaining a more comprehensive understanding of the social context, policies, and legal implementation related to the phenomenon under investigation (Mukti Fajar ND and Yulianto Achmad, 2010). The empirical juridical approach provides a solid framework for analyzing and comprehending the complexity of legal issues by using empirical data as a strong foundation.

III. RESULT AND DISCUSSION

The death penalty is an instrument to protect society and the state, both in preventive and repressive forms (Philip Nonet and Philip Selznick, 2007). In this context, repression does not render those governed vulnerable and weak. The purpose of the death penalty is to make the public aware that the government does not tolerate disruptions to the tranquility greatly feared by the general population. The existence of the death penalty can deter potential criminals from committing such offenses. The most important factor in the death penalty is the aspect of death itself. Medically, death refers to physical death, but the actual experience of death involves not only the physical aspect but also the social aspect. From a sociological perspective, someone may still be alive physically but experience social death at the same time. This occurs when an individual is in a social condition that deprives them of their freedom to participate in social activities.

Convicts who undergo the death penalty are isolated from their usual social routines, and this is a heavy blow, especially when they are forced to be separated from their close family members (Satjipto Rahardjo, 2009). Before the execution of the death penalty is carried out, the convict must be informed of the execution plan. The convict must be notified three days before the execution day, as stipulated in Article 6 paragraph (1) of Law No. 2/PNPS/1964. The provision states, "Three times twenty-four hours before the implementation of the death penalty, the Chief Prosecutor/Prosecutor must inform the convict about the execution of the death penalty." Every death row convict has the right to make a final request to the Attorney General or the prosecutor, as regulated in Article 6 paragraph (2) of Law No. 2/PNPS/1964. In the execution, aside from the firing squad, those allowed to be present based on Article 8 of Law No. 2/PNPS/1964 are the convict's defense attorney. At the request of the defense attorney or the convict, the defense attorney can be present during the implementation of the death penalty imposed on their client.

1. Regulation of the Death Penalty from the Perspective of Legal Objectives

Jeremy Bentham, in his teachings, proposed that the purpose of law and the embodiment of justice is to achieve "the greatest happiness of the greatest number." Bentham also stated that the purpose of legislation is to generate happiness for society. Legislation should strive to achieve four objectives: a) provide livelihood, b) ensure abundant food, c) offer protection, and d) foster togetherness.

According to The Indonesian Human Rights Watch (Waluyadi, 2009), there are three main reasons why the imposition of the death penalty is frequently used by the courts. First, the application of the death penalty was employed by the colonial regime of the Netherlands and continued to be practiced during the authoritarian New Order regime to instill fear and eliminate political opponents. This can be seen in the application of political crimes under Article 104 of the Criminal Code. Second, the effort to enact new legislation that includes the death penalty as a political compensation measure due to the inability to reform a corrupt legal system. However, the death penalty has never been proven effective in reducing crime rates, including drug-related offenses. Third, the increase in crime rates is solely seen as the responsibility of individual perpetrators.

The implementation of the death penalty, which has legal force, must go through the decision of the president. The execution is carried out by shooting until death, and the procedures for implementing the death penalty have been regulated in Perkap (Chief of Police Regulation) No. 12 of 2010 concerning the Implementation of the Death Penalty, as well as Law No. 2 Pnps of 1964. The imposition of the death penalty on perpetrators of crimes aims to protect the majority of people in the broad sense of society from the consequences of criminal acts. The legal objective in maintaining order and creating security is the main purpose in deciding to impose the death penalty. In its implementation, the death penalty is more focused on the state's responsibility to protect its citizens from the actions committed by its own people. The imposition of the death penalty aims to provide retribution and have a deterrent effect on criminals. In the context of humanity, the death penalty is necessary to protect society from evil deeds and for the benefit of mankind.

In the context of legal development in Indonesia, when the colonial government of the Netherlands enacted the Criminal Code in 1918, it deviated from its own stance and maintained the death penalty in Indonesia for serious crimes. Various aggravating factors are considered in deciding the imposition of the death penalty.

a. Perpetrator's Circumstances
   Regulated in Article 52 of the Criminal Code, if a crime is committed using the authority, opportunity, or means provided to the perpetrator due to their position, the punishment can be increased. This offense is specifically regulated in Articles 413 to 437 of the Criminal Code.
b. Criminal Acts Committed
   The provision on recidivism is regulated in Article 486, Article 487, and Article 488 of the Criminal Code, while the provisions regarding the combination of criminal acts are stipulated in Articles 63 to 71 of the Criminal Code. In this case, the combination of criminal acts can occur in the following forms:
   1) Committing an act that violates several criminal provisions; and
   2) Committing several acts, each of which constitutes a separate criminal offense.

Several criminal provisions in determining the death penalty under Law No. 1 of 2023.

a. Article 100, Paragraph 1 of Law Number 1 of 2023 on the Criminal Code stipulates that a judge may impose the death penalty with a probationary period of 10 years, taking into account the remorse of the defendant and the possibility of rehabilitation or the role of the defendant in the crime.
b. Article 1 (1) No act shall be subject to criminal sanctions and/or actions except based on criminal regulations in existing legislation before the act was committed.
c. Article 9 The application of provisions referred to in Articles 4 to 8 is limited by matters exempted according to applicable international agreements. This article serves as a consideration for judges in deciding the death penalty for certain crimes related to international relations between countries.
d. Article 51 The purpose of punishment is: a) to prevent the commission of crimes by upholding the rule of law for the protection and welfare of society; b) to reintegrate the convict into society by providing guidance and assistance to become a good and useful person; c) to resolve conflicts arising from criminal acts, restore balance, and create a sense of safety and peace in society; and d) to instill remorse and alleviate guilt in the convict. Article 52 Punishment is not intended to degrade human dignity.
e. Article 54 (1) In imposing punishment, the following factors must be considered: a) the nature of the offender's offense; b) the motive and purpose of the criminal act; c) the offender's mental attitude; d) whether the criminal act was premeditated or not; e) the method used in committing the criminal act; f) the attitude and actions of the offender after committing the criminal act; g) the offender's personal history, social conditions, and economic circumstances; h) the impact of the punishment on the offender's future; i) the impact of the criminal act on the victim or the victim's family; j) forgiveness from the victim and/or the victim's family; and/or k) the legal and justice values prevailing in society.
f. Article 53 (1) When adjudicating a criminal case, the judge must uphold the law and justice. (2) If there is a conflict between legal certainty and justice in upholding the law and justice as referred to in paragraph (1), the judge must prioritize justice.

According to the author, the purpose of punishment in this context includes providing a deterrent effect on criminals. In terms of humanity, the death penalty is necessary to protect society from the actions of wicked individuals. However, it should be noted that the imposition of the death penalty is only an alternative and not the primary punishment, as stated in Article 67 of the Criminal Code, which specifically mentions alternative death penalty as described in Article 64 letter c. Additionally, Article 98 also threatens the alternative death penalty as a last resort to prevent criminal acts and maintain public security.

This means that the death penalty is not the primary objective in criminal punishment in Indonesia when deciding a criminal case. The theory of criminal punishment in Indonesia adopts a combined approach, where judges are expected to consider criminal sanctions that allow for the rehabilitation of the offender in their discretion. In this regard, Indonesian law provides an opportunity for criminals to improve their conduct in the eyes of the law and society. Therefore, in death penalty verdicts, judges sometimes decide against imposing the death penalty due to various considerations, such as rehabilitation, humanitarian aspects, and the state's commitment to provide opportunities and the right to life for the

offender. Although there are articles in criminal regulations that mention that the death penalty can be imposed for certain cases.

The purpose of criminal law, viewed from a classical perspective, is to protect individuals from the power of rulers or the state. However, according to modern views, the purpose of criminal law is to protect society from crime. Therefore, when a judge pronounces a verdict against a defendant, it is important for the judge to consider the goals of punishment that will be achieved through the verdict. Some legal scholars, such as Mertokusumo (2010), state that there are three proportional elements of legal ideals that must be present, namely legal certainty (Rechtssicherheit), justice (Gerechtigkeit), and usefulness (Zweckmäßigkeit). These three elements of legal ideals are inseparable, and every legal rule should strive to fulfill all three. In practice, these three elements of legal ideals are interdependent. Justice cannot be achieved if society is chaotic or disorderly because social order requires legal certainty. Conversely, legal certainty will not be beneficial if the law is unjust and does not provide benefits to society. This is explained in the book "Pengantar Ilmu Hukum" by Wiryono Prodjodikoro (R. Soeroso, 2011).

According to Gustav Radbruch, the purposes of law are justice, certainty, and utility.

a. Principle of justice
   Justice can be defined as a balance between rights and obligations that are fair for each party, in terms of both benefits and losses. Practically, justice means providing equal rights corresponding to individual capacities or delivering proportional treatment to every person. The purposes of law include justice, legal certainty, and legal utility.
b. Principle of certainty
   Legal certainty is the expectation of justice seekers to be protected from arbitrary actions by law enforcement officials who sometimes exhibit arrogant behavior. Legal certainty provides clarity regarding an individual's rights and obligations under the law. Without legal certainty, individuals would be confused about the actions they should take and would not know what is right or wrong, prohibited or allowed by law.
c. Principle of utility
   The principle of utility needs to be considered because everyone expects benefits from the implementation of law enforcement. Law enforcement should not cause unrest in society. When talking about law, we should not only focus on statutory regulations, which may sometimes be inconsistent or irrelevant to the lives of the people. In line with this principle, Prof. Satjipto Rahardjo stated that justice is indeed the primary value, but the value of utility should also be taken into account. In law enforcement, the comparison between benefits and sacrifices should be proportional. The principle of utility complements the principles of justice and legal certainty.

2. Perspectives on Theories of Punishment in Indonesia

The law has two interconnected dimensions. Firstly, it is a collection of statements related to the conceptual system of legal rules and legal decisions that mostly serve as positive foundations. Legal theory is the product of theoretical activities in the field of law. Secondly, it is a process of theoretical activities involving research in the field of law. Prof. Satjipto Rahardjo (1986) states that theory plays an important role in the world of science. Theory provides a means to summarize and better understand problems. Things that initially appear scattered and independent can be united and explained in meaningful relationships. Thus, theory provides explanations through the organization and systematization of the issues discussed. A theory includes three elements: a set of propositions consisting of defined and interconnected constructs, a systematic view of phenomena described by variables.

Koeswadji (1995) states that the main objectives of criminal punishment are: 1) Maintaining social order (dehandhaving van de maatschappelijke orde); 2) Repairing the harm suffered by society due to crime (het herstel van het door de misdaad ontstane maatschappelijke nadeel); 3) Rehabilitating the offender (verbetering van de dader); 4) Neutralizing the offender (onschadelijk maken van de misdadiger); 5) Preventing the occurrence of crime (tervoorkoming van de misdaad).

Generally, theories of criminal punishment can be classified into three major categories: absolute theories or retributive theories (vergeldingstheorieën), relative theories or goal-oriented theories (doeltheorieën), and combined theories (verenigingstheorieën).

Theories of Punishment and Their Respective Objectives are as follows:

a. Absolute Theory or Retributive Theory (Vergeldings Theories)

According to this theory, punishment is imposed solely because someone has committed a crime. This theory was introduced by Kent and Hegel. Absolute Theory is based on the idea that punishment is not a practical goal, such as reforming the criminal, but an absolute demand that must be fulfilled. In other words, the essence of punishment is retribution (revegen).

As stated by Muladi (Muladi, 1992), the absolute theory views punishment as retaliation for the committed offense, focusing on the act itself and directly related to the occurrence of the crime. This theory emphasizes that sanctions in criminal law are imposed solely because someone has committed a crime, which is an absolute consequence that must exist as a form of retribution to the offender. Therefore, the purpose of sanctions is to fulfill the demands of justice.

According to Vos (Andi Hamzah, 1993), absolute retribution theory is divided into subjective retribution and objective retribution. Subjective retribution is retaliation for the offender's wrongdoing, while objective retribution is retaliation for the impact created by the offender in the external world.

Retribution theory states that punishment is not aimed at practical purposes, such as reforming the criminal. The crime itself is the basis for punishment. Punishment exists absolutely because of the committed crime. There is no need to consider the benefits in imposing punishment. Every crime must result in punishment for the offender. Therefore, this theory is called the absolute theory. Punishment is an absolute demand, not just something that should be imposed but becomes a necessity. The essence of punishment is retribution (Andi Hamzah, 2005).

Nigel Walker explains that there are two groups of adherents to retribution theory, namely:

1) Pure retribution theory: Views that punishment must be proportional to the committed offense.
2) Impure retribution theory: Divided into two categories:
   a) Limited retribution theory (The Limiting Retribution): Believes that punishment does not have to be proportional to the offense. What matters is to avoid excessive impact of sanctions in criminal law that goes beyond reasonable limits to rectify the violation.
   b) Retribution in distribution theory: Advocates of this theory believe that sanctions in criminal law should not only be based on retribution but also have appropriate limits in determining the severity of the punishment.

There are several characteristics of retribution theory as described by Karl O. Cristiansen in the book by Muladi (Muladi and Barda Arif Nawawi, 1992). These characteristics are as follows:

1) The sole purpose of punishment is retribution.
2) Retribution is the primary goal without considering means for other purposes, such as societal welfare.
3) Guilt is the sole condition for imposing punishment.
4) Punishment should be tailored to the offense committed by the perpetrator.
5) Punishment is retrospective, focusing solely on pure punishment, and its goal is not to rehabilitate, educate, or reintegrate the offender back into society.

b. Relative Theory or Goal Theory (Doel Theories)

The relative theory, also known as the goal theory, focuses on the view that punishment is a tool to uphold the rule of law in society. This theory differs from the absolute theory, where the imposition of punishment has specific goals, such as reforming the offender's mental attitude or rendering them no longer dangerous, which requires a process of mental rehabilitation. According to Muladi (Zainal Abidin, 2005), this theory states that punishment is not retribution for the offender's wrongdoing, but a means to achieve beneficial goals in protecting society and promoting welfare.

From this theory, the purpose of punishment emerges as a means of prevention, both specific prevention aimed at the offender and general prevention aimed at society. This relative theory is based on three main purposes of punishment: preventive, deterrent, and reformative. The preventive purpose aims to protect society by isolating the criminals from the community. The deterrent purpose aims to instill fear of committing crimes, both for the offenders to prevent them from repeating their actions and for the general public. Meanwhile, the reformative purpose aims to change the offender's wicked nature through guidance and supervision, so that they can reintegrate into daily life in accordance with

the prevailing values in society. According to this theory, a crime does not always have to be followed by punishment. The necessity and benefits of the crime must be questioned, whether for the society or for the offender themselves. This involves not only the past but also considers the future.

Thus, there are broader goals than just imposing punishment. Therefore, this theory is also known as the goal theory. These goals are primarily aimed at preventing the recurrence of crimes in the future (prevention). This relative theory considers the imposition of punishment as aiming to reform the offender into a good individual who no longer engages in criminal behavior. According to Zevenbergen (Wirjono Projdodikoro, 2003), there are three aspects of the offender's improvement, namely juridical improvement in terms of compliance with the law, intellectual improvement in thinking to recognize the wrongness of the crime, and moral improvement in terms of moral awareness to become an individual with high morality.

c. Combined Theory/Modern Theory (Verenigings Theories)

The combined theory or modern theory views that the purpose of punishment is plural, as it combines the principles of relativity (goals) and absoluteness (retribution) into a unified whole. This theory has a dual nature, where punishment carries the character of retribution as long as it is seen as a moral criticism of wrongful actions. However, its goal character lies in the idea that this moral criticism aims to reform or change the behavior of the offender in the future.

This theory was introduced by Prins, Van Hammel, Van List (Djoko Prakoso, 1988) with the following perspectives:

1) The primary objective of punishment is to eradicate crime as a social phenomenon.
2) Criminal law and criminal legislation should consider the findings of anthropological and sociological studies.
3) Punishment is one of the most effective tools that the government can utilize to combat crime. However, punishment is not the sole means; therefore, it should not be used in isolation but in combination with social efforts.

From the above perspective, it indicates that this theory requires punishment to not only inflict physical suffering but also psychological suffering, and most importantly, to provide punishment and education.

From the above description, it can be concluded that the purpose of punishment is the desire for improvements within individuals who commit crimes, especially in minor offenses. However, for certain offenses that are considered to be able to disrupt social and community life, and when it is believed that those criminals can no longer be rehabilitated, the retributive nature of punishment cannot be avoided. This theory, on one hand, acknowledges the element of retribution in imposing punishment. However, on the other hand, it also recognizes the elements of prevention and the improvement of offenders that are inherent in each punishment. This third theory emerges due to the weaknesses found in both the absolute theory and the relative theory, and the weaknesses of these two theories are (Hermien Hadiati Koeswadji, 1995).

a. Weaknesses of the absolute theory:
   1) It can lead to injustice. For example, in cases of murder, not all perpetrators are sentenced to death penalty; instead, it should be based on the available evidence.
   2) If the basis of this theory is retribution, then why is it only the State that imposes punishment?

b. Weaknesses of the goal theory:
   1) It can also result in injustice. For instance, in an attempt to prevent crime by instilling fear, minor offenders may receive disproportionately severe punishments solely for the purpose of intimidation, which contradicts the principle of fairness.
   2) It disregards the satisfaction of the society. If the sole objective is to rehabilitate the offender, the satisfaction of the society may be overlooked.
   3) It is difficult to implement in practice. The goal of preventing crime through fear tactics is challenging to execute in practice, especially concerning recidivism.

With the emergence of this combined theory, there are differences of opinion among criminal law experts. Some emphasize retribution, while others seek to achieve a balance between retribution and prevention. The first approach, which emphasizes retribution, is adopted by Pompe (Andi Hamzah, 2005).

Pompe states: "Retribution is not ignored. Indeed, punishment can be distinguished from other sanctions, but it still has its distinctive characteristics. This means that punishment is a form of sanction and, therefore, is tied to the objectives of those sanctions. The application of punishment will only be carried out if it is beneficial in fulfilling the norms and beneficial to the public interest."

Van Bemmelan also adopts a combined approach in his explanation by stating that punishment aims to both retaliate against wrongdoing and safeguard public safety. This action is intended to secure and maintain those objectives. Thus, both punishment and other actions aim to prepare the return of the convicted individuals to society.

Grotius developed a combined theory that emphasized absolute justice manifested in retribution, but it must also be beneficial to society. The foundation of any punishment is suffering commensurate with the gravity of the offense committed by the convicted individual. However, to what extent the severity of the punishment and the gravity of the offense committed by the convicted individual can be measured is determined by what is beneficial to society.

The theory proposed by Grotius was further developed by Rossi and later Zevenbergen, stating that the meaning of any punishment is retribution, but the purpose of any punishment is to protect the rule of law. Punishment restores respect for law and governance (Andi Hamzah, 2005). The second combined approach emphasizes the defense of societal order. This approach should not be more burdensome than the impact it generates, and its utility should not exceed what is necessary.

The combined theory essentially arises from dissatisfaction with the ideas of retribution theory and the positive elements of both theories, which then becomes the starting point for the combined theory. This theory aims to create a balance between retributive elements and the goal of rehabilitating offenders. Although it begins by addressing the shortcomings of retribution theory, Indonesia has legal goals closely related to the criminal justice system, where Indonesia adheres to the combined theory of criminal law, known as the De Verenigings Theory. This theory emphasizes the aspect of the resocialization process of offenders in the hope of restoring the social and moral qualities of society so that they can reintegrate into society. According to Albert Camus, criminals are still human beings, and as humans, they retain the freedom to learn new values and adapt. Therefore, the imposition of sanctions should also be educational. In this regard, an offender requires rehabilitative sanctions.

3. The Death Penalty in Relation to the National Legal Objectives in Criminal Punishment Theory

National law is a collection of laws or regulations established and implemented to achieve the goals, foundations, and aspirations of a country's legal system. In the context of Indonesia, national law is a unified body of laws or regulations built to achieve the state's goals, sourced from the Preamble and articles of the 1945 Constitution. The goals, foundations, and aspirations of Indonesian law are contained in the Preamble and articles of the 1945 Constitution.

In the fourth paragraph of the Preamble of the Constitution of the Republic of Indonesia, there is the formulation of Pancasila as the foundation of the Indonesian state. This formulation of Pancasila is legally and constitutionally valid, applicable, and binding on all state institutions, societal institutions, and every citizen without exception. The existence of Pancasila as a source of law is also explained in the Decree of the People's Consultative Assembly No. III/MPR/2000 regarding the Sources of Law and the Hierarchy of Legislation. Therefore, in enacting the death penalty, the principles of Pancasila cannot be disregarded. Although the death penalty is contrary to the principles of fair and civilized treatment, it is imposed to achieve the goals of maintaining order and security as the objectives of the state. The statement by C.S.T. Kansil (S.T. Kansil, 1986) also explains the purpose of law. According to him, to maintain balance in the relationship between members of society, it is necessary to have legal regulations that impose sanctions on lawbreakers. Hierarchically, the purpose of law is to prevent anyone from becoming their own judge (eigenrichting is verboden), that is, not to judge and punish violations of the law that befall themselves. Every case must be resolved through a judicial process mediated by a judge. Therefore, in order to maintain the stability and security of the state from various threats, criminal sanctions must be implemented to uphold unity and achieve social justice. The imposition of the death penalty is based on the considerations of judges in realizing justice, certainty, and utility as the legal objectives desired by the Indonesian nation. Although Indonesia adheres to a combined theory system, where the legal objectives go beyond mere retribution in imposing criminal sanctions on offenders, it also emphasizes the aspects of rehabilitation and education.

Prevention of criminal intent, personal rehabilitation of the convicted, and providing moral satisfaction to the society in line with a sense of justice are aspects that must be considered in the death penalty as a national legal objective. Therefore, the decision to impose the death penalty must involve broad considerations of the impact that will be felt by society, while taking into account the legal objectives encompassed in Pancasila as a source of national law and the objectives of the Indonesian state. Sunaryati Hartono states that law is a tool used by the government to create a national legal system in order to achieve the aspirations of the nation and the objectives of the state (Moh. Mahfud MD, 2009).

In regulating the rules regarding the death penalty, consideration of national legal objectives is crucial. National law is designed to achieve specific stages of the state's goals as stated in the Preamble of the 1945 Constitution. The objectives of the Indonesian state encompass at least four points, which are to protect all Indonesian people, promote public welfare, educate the nation, and participate in creating world peace. Therefore, the existing regulations are based on the essence of understanding the sources of national law, namely Pancasila.

Indonesia asserts its national objectives in its Constitution, specifically in the Preamble of the 1945 Constitution (UUD 1945). The Preamble of the 1945 Constitution states that the establishment of the Unitary State of the Republic of Indonesia aims to protect all Indonesian people and the entirety of Indonesian territory, promote public welfare, educate the nation, and participate in implementing world order based on independence, eternal peace, and social justice. Pancasila is recognized as the highest law in Indonesia and serves as the foundation of national law. The principles of Pancasila formulate the essence or abstract nature of Indonesian human life, which includes three inherent relationships of humanity: the relationship between humans and God, the relationship between humans and other humans, including oneself, and the relationship between humans and their surrounding environment (organisms, vegetation, and animals).

In Chapter II of the Indonesian Criminal Code (KUHP) regarding Crimes, Article 10 mentions various forms of punishment, including principal punishment and additional punishment. The death penalty is a type of principal punishment that occupies the first position. Additionally, in Law No. 1 of 2023, Article 100 governs the implementation of the death penalty. The Constitutional Court has previously ruled that the death penalty for certain crimes is not in contradiction with the 1945 Constitution and is also not in violation of the right to life as stipulated in the constitution. The human rights contained in Articles 28A to 28J must be balanced with the right to respect and value others in order to establish order and social justice. Society would certainly be pleased if the implementation of the death penalty follows the applicable procedures. In this regard, if the death penalty has a deterrent effect, especially among perpetrators of serious crimes, it will gain support from the community as it is seen as an example for those who intend to violate legal norms. However, how does the perspective of Pancasila relate to the implementation of the death penalty in Indonesia? In Indonesia's legal system, which follows Civil Law, where all regulations are written and enshrined in the 1945 Constitution as the applicable constitution in Indonesia, the perspective of Pancasila indicates that the death penalty is highly contradictory to the second principle, namely "just and civilized humanity." Therefore, the possibility of implementing the death penalty in Indonesia is very low. However, if we consider the analysis of each case, the level of harm, the deterrent effect, and the impact of the criminals, as well as the provisions in the laws that stipulate that perpetrators can be sentenced to death, the implementation of the death penalty can still be considered. For example, in cases of corruption, drug-related crimes, and premeditated murder, the imposition of the death penalty may be necessary because its impact goes beyond the perpetrators and affects future generations of the nation. In order to achieve the objectives of the state, it is important to uphold fair laws, including in determining the death penalty as a means to safeguard national security and maintain balance within the legislative system.

IV. CONCLUSION

Law functions as a guide for behavior and as a means for society to create order. Law can be seen as a tool within the social system that determines the steps to be taken to regulate human relationships. In determining the death penalty, regulations established through legal considerations must be taken into

account. There are factors that can aggravate the actions of the criminal, making them deemed guilty and deserving of the death penalty.

Although the death penalty is a form of punitive punishment that ends the life of the criminal, such retribution tends to follow an absolutist theory. This theory emphasizes the cessation of criminal actions without providing an opportunity to improve the quality of their social behavior. However, in Indonesia's criminal justice system, a combined theory is more prevalent, which combines both absolutist and relativist theories in the understanding of combined criminal punishment theory. This becomes a consideration in deciding a case so that retribution is not the primary goal in punishing the criminal to make them experience misery in the context of suffering, but rather emphasizes the aspect of self-improvement. This aligns with the national legal objective of protecting its people, in accordance with the mandate of laws derived from Pancasila.

Although in Indonesia, both in the National Criminal Code and other legislation, the death penalty is clearly regulated, including its procedures for implementation, the application of the death penalty to criminals must prioritize criteria for the committed crime, including: (1) Transgressing the limits of humanity, (2) Endangering and threatening many human lives, (3) Damaging the nation's generations, (4) Undermining the nation's civilization, (5) Disrupting the order on Earth, (6) Harming and destroying the country's economy. The types of crimes falling into this category include drug offenses, terrorism, premeditated murder, sadistic and cruel fatal abuse, and corruption. The imposition of the death penalty does not deviate from the aspects of the national legal objective, which include protecting all Indonesian people, promoting public welfare, educating the nation, and participating in creating world peace. These national legal objectives cannot be separated from the aspects of justice, certainty, and the usefulness of the law as the basis for deciding the death penalty for criminals.

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