

Criminal Law Policy (Penal Policy) in the Formulation of Criminal Sanctions Against Narcotics Crimes in Indonesia



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ABSTRACT: To overcome the problem of drug crimes, it is necessary to have a criminal law policy (penal policy). This policy must be concentrated on two things, the first is aimed at applicable policies, namely policies on how to apply the criminal law laws and regulations currently in force in order to deal with drug problems and the second is formulative policies or policies that lead to reform of criminal law (penal law reform) namely policies on how to formulate criminal law legislation which is also related to the concept of the new Criminal Code (KUHP), especially in the context of tackling drug crimes in the future.

This research uses a descriptive analysis methodology with a normative juridical approach with secondary data sources. It is hoped that the results of this research will be able to provide answers regarding the most appropriate form of sanctions to be applied to perpetrators of drug crimes. The policy of formulating criminal sanctions according to the drug law in the future for perpetrators of drug crimes in Indonesia is in line with the general provisions contained in the National Criminal Code (KUHP) Concept and in accordance with the decision of the Constitutional Court regarding the death penalty provisions, taking into account: The death penalty is no longer a crime. principal, but as a special and alternative punishment, the death penalty can be imposed with a probationary period of ten years which, if the convict behaves commendably, can be changed to life imprisonment or 20 years g. The death penalty cannot be imposed on children who are not yet adults. The execution of the death penalty against pregnant women and someone who is mentally ill is postponed until the pregnant woman gives birth and the mentally ill convict recovers.

A. BACKGROUND

In this era of globalization, society is slowly developing, where this development is always followed by a process of adjustment, which sometimes occurs unbalancedly. In other words, violations of these norms are becoming more frequent and crimes are increasing, both in type and in patterns becoming more complex. The development of society is due to increasingly advanced science and society's mindset. The community is trying to carry out reforms in all fields. However, technological advances do not always have a positive impact, sometimes they even have a negative impact. What this means is that with advances in technology there is also an increase in crime problems using sophisticated modus operandi. This is a challenge for law enforcement officials to be able to create countermeasures, especially in cases of narcotics and illegal drugs.

Recently, narcotics and illegal drug crimes have become transnational in nature and are carried out with high modus operandi and sophisticated technology. Law enforcement officials are expected to be able to prevent and overcome these crimes in order to improve morality and the quality of human resources in Indonesia, especially for the next generation. Among the law enforcement officers who also have an important role in drug crime cases are "Investigators", in this case POLRI investigators, where investigators are expected to be able to assist in the process of resolving drug crime cases. Drug abuse can result in dependency syndrome if its use is not under the supervision and guidance of health workers who have the expertise and authority to do so. This is not only detrimental to misuse, but also has social, economic and national security impacts, so this is a threat to the life of the nation and state. Drug abuse encourages illicit trafficking, while illicit drug trafficking causes abuse to become more widespread and have an international dimension. Therefore, efforts to prevent and control drug abuse and efforts to eradicate illicit trafficking are needed considering the progress in the development of communication, information and transportation in the current era of globalization. Drug abuse is closely related to illicit trafficking as part of the world of international crime.

The illegal trade mafia supplies drugs so that people become dependent so that the amount of supply increases. The relationship between the dealer/dealer and the victim makes it difficult for the victim to escape from the dealer/dealer, and it is not uncommon for victims to also be involved in illicit trafficking due to their increasing need and dependence on drugs.¹The increase in illicit drug trafficking cannot be separated from the activities of transnational criminal organizations operating in various countries

¹Lydia Harlina Martono & Satya Joewana, Helping the Recovery of Drug Addicts and Their Families, Balai Pustaka, Jakarta, 2006.Pg.1.

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as part of an international crime network. Because of the enormous profits, these criminal organizations try by all means to maintain and continue to develop illicit drug trafficking businesses by infiltrating, interfering and destroying government structures, legitimate trade and financial businesses and influential groups in society. Transnational drug crimes are carried out using sophisticated modus operandi and technology, including safeguarding the proceeds of drug crimes.

The development of the quality of drug crimes has become a very serious threat to human life. Even though drugs are very useful and necessary for treatment and health services, if they are misused or used not in accordance with treatment standards, especially if accompanied by illegal drug trafficking, they will have very detrimental consequences for individuals and society, especially the younger generation, and can even cause greater danger. great for the life and cultural values of the nation. In an effort to tackle the problem of drug abuse and illicit trafficking, the government has ratified the United Nations Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the 1971 Convention on Psychotropic Substances.) by issuing Law no. 7 of 1997 concerning Ratification of the United Nations Convention Concerning the Eradication of Illicit Trafficking in Narcotics and Psychotropic Substances and Law no. 8 of 1996 concerning Ratification of the Psychotropics Convention. Then in 1997 the Government issued Law no. 5 of 1997 concerning Psychotropic Substances and Law No. 22 of 1997 concerning Narcotics as a replacement for the old Law, namely Law no. 9 of 1976 concerning narcotics. These two laws (UU No. 5 of 1997 and Law No. 22 of 1997) basically regulate that psychotropics and narcotics are only used for the purposes of health services and science. So it is hoped that these two laws can operate more effectively to prevent and eradicate the abuse and illicit trafficking of drugs and psychotropic substances, including to avoid the territory of the Unitary State of the Republic of Indonesia being used as a transit point or target for illicit trafficking of drugs and psychotropic substances. These two conventions open up opportunities for countries that recognize and ratify them to collaborate in preventing abuse and eradicating illicit drug trafficking, both bilaterally and multilaterally.

Cases of drug abuse are increasing rapidly in Indonesia, even though the government and society have made various efforts, drug abuse seems very difficult to eradicate. Drug abuse and crime has reached a dangerous level, because apart from physically and mentally damaging it also affects the social life of society which in turn can disrupt the pillars of national security in the context of national development towards a just and prosperous society as envisioned in the state's objectives are stated in the fourth paragraph of the Preamble to the 1945 Constitution. In this way, drugs can hinder national development with a material-spiritual aspect. The dangers of drug use have a huge impact on the country. If there is massive drug use in society, the Indonesian nation will become a sick nation.

That drug crimes are generally not committed by individuals independently, but are carried out jointly and even by syndicates that are well organized, neat and very secretive. One of the rational efforts used to tackle drug trafficking is a criminal law policy approach. Based on these two regulations, drug crimes are threatened with high and serious penalties, with the maximum possible sentence being the death penalty in addition to imprisonment and fines. Considering that drug and psychotropic drugs crimes are included in a special type of crime, the criminal threat against them can be imposed cumulatively by imposing 2 main types of punishment at once, for example imprisonment and a fine or death penalty and a fine. In the Criminal Code (KUHP), it is not possible to impose two basic sentences at the same time, so there is no punishment imposed in the form of imprisonment and a fine because the Criminal Code (KUHP) only requires one of the main punishments. However, as a special crime, for drug and psychotropic drugs crimes, judges are allowed to sentence the defendant to two main crimes at the same time which generally take the form of corporal punishment (in the form of death penalty, life imprisonment or imprisonment) with the aim of ensuring that it burdens the perpetrator so that criminal acts can be overcome in society. In the Indonesian criminal system, the death penalty is the most severe punishment of the many sentences imposed on perpetrators of criminal acts, because this punishment concerns the human soul. The implementation of the death penalty always invites controversy. This does not only happen in Indonesia, but this controversy also occurs in a number of European countries that have canceled the death penalty. Several opinions state that the death penalty is not in accordance with the teachings of Islamic law, Pancasila and the 1945 Constitution. In addition, the death penalty is contrary to human rights based on Article 28 A of the 1945 Constitution, second amendment, Article 4 and Article 33 paragraph (2) of the Human Rights Law. No. 39 of 1999 that every person is free from enforced disappearance and loss of life and is contrary to Article 6 paragraph (1) of the ICCPR that every person has the right to life. To overcome the problem of drug crimes, it is necessary to have a criminal law policy (penal policy). The policy must be concentrated on two things, The first leads to applicable policies, namely policies on how to apply criminal law laws and regulations currently in force in order to deal with drug problems and the second is formulative policies or policies that lead to criminal law reform (penal law reform), namely policies on how to formulate regulations. criminal law legislation which is also related to the concept of the new Criminal Code (KUHP), especially in the context of tackling drug crimes in the future.

Based on the above background, the author considers it necessary to research further regarding the Criminal Sanctions Formulation Policy (penal policy) against perpetrators of drug crimes in Indonesia, so it is hoped that the results of this research will be able to provide answers regarding the most appropriate form of sanctions to be applied to perpetrators of these crimes. drug crime.

B. PROBLEM FORMULATION

1. What is the criminal sanctions policy for perpetrators of drug crimes according to the provisions of Law 35 of 2009 concerning Narcotics and Law no. 5 of 1997 concerning Psychotropics?
2. What is the policy for formulating criminal sanctions according to drug law for perpetrators of drug crimes in the future?

C. FRAMEWORK

In terms of policy terminology, it comes from the term "policy" (England) or "politiek" (Dutch). This terminology can be interpreted as general principles that function to direct the government (including law enforcers) in managing, regulating or resolving public affairs, community problems or areas of drafting legislation and allocating laws/regulations in a (general) goals that lead to efforts to realize the welfare and prosperity of society (citizens).²

Starting from these two foreign terms, the term criminal law policy can also be called criminal law politics. In foreign literature, the term criminal law politics is known by various terms, including penal policy, criminal law policy or strafrechtspolitik.³

The definition of criminal law policy or politics can be seen from legal politics and criminal politics. According to Sudarto, "Legal Politics" is⁴

- a. Efforts to create good regulations according to the circumstances and situations at any given time.
- b. Policy from the state through authorized bodies to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired to.⁵

Politics or criminal law policy is often said to be part of law enforcement (law enforcement policy). Apart from that, efforts to overcome crime through the creation of criminal laws (laws) are essentially an integral part of efforts to protect society (social welfare). Therefore, it is also natural that criminal law policy or politics is also an integral part of social policy or politics.

Social policy can be interpreted as all rational efforts to achieve community welfare and at the same time include protection for the community. The definition of "social policy" in this article also includes "social welfare policy" and "social defense policy".

Looking at the explanation above, it can be emphasized that criminal law reform (penal reform) is part of criminal law policy/politics (penal policy). The background to criminal law reform can be viewed from sociopolitical, sociophilosophical, sociocultural aspects, or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). This means that criminal law reform must essentially be a manifestation of changes and updates to various aspects and policies that are the background to the reform. Criminal law reform generally has the meaning of an effort to reorient and reform criminal law in accordance with the central sociopolitical, sociophilosophical and sociocultural values of Indonesian society which underlie social policy, criminal policy and law enforcement policy in Indonesia.

using penal means is not a strategic policy, because the policy has limitations and contains several weaknesses (negative sides). So, if seen from a policy perspective, the use or intervention of penalties should be carried out more carefully, precisely, sparingly, selectively and limitatively.⁶This is important to do in order to maximize efforts to prevent crime in society because the sources/causes of deviant behavior, especially in religious life, are very complex, and if it only relies on criminal/penal law it is certainly not enough. Based on the things mentioned above, seen from the perspective of "criminal policy", efforts to overcome crime (including the prevention of heretical sects) certainly cannot be carried out partially using criminal law ("penal" means), but must also be taken with an integral/systemic approach.

That the term "criminal" comes from Sanskrit (in Dutch it is called "straf" and in English it is called "penalty") which means "punishment". According to Subekti and Tjitrosoedibio in their legal dictionary, "criminal" is "punishment".⁷In essence, the history of criminal law is the history of crime and punishment which always has a close relationship with the problem of criminal acts.⁸The problem of criminal acts is a humanitarian problem and a social problem that is always faced by every form of society. Where there is society, there is crime. Criminal acts are always closely related to values, structure and society itself. So whatever human efforts to eliminate it, criminal acts cannot possibly be resolved because criminal acts cannot be erased but can only be reduced or minimized in intensity. According to Mardjono Reksodiputro, to explain that criminal acts cannot be eliminated in society at all, but the term "to eliminate criminal acts to the limits of tolerance" can only be used.

²Lilik Mulyadi, Bunga Rapai Criminal Law Theoretical and Practical Perspectives, PT. Bandung Alumni, 2008, p. 389.

³Aloysius Wisnubroto, Criminal Law Policy in Combating Computer Abuse, Yogyakarta, Atmajaya University, 1999, pp: 10

⁴Sudarto, Law and Criminal Law, Bandung, Alumni, 1981, p. 159.

⁵Sudarto, Criminal Law and Community Development, Bandung, Sinar Baru, 1983, p. 20.

⁶Ibid p. 48.

⁷Subekti and Tjitrosoedibio, Legal Dictionary, (Jakarta: Pradnya Paramita, 1980), p. 83.

⁸Sudarto, Law and Criminal Law, (Bandung: Alumni, 1986), p. 23.

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This is because not all human needs can be fulfilled perfectly. Apart from that, humans also tend to have different interests from one another, so it is not impossible that based on these differences in interests, various principled conflicts arise. However, criminal acts cannot be allowed to grow and develop in society because they can cause damage and disruption to social order. Herbert L Packer revealed the use of criminal sanctions to overcome criminal acts as follows:

1. That criminal sanctions are very necessary because we cannot live now or in the future without crime (The criminal sanction is indispensable, we cannot, now or in the foreseeable future get along, without it);
2. That criminal sanctions are the best available tool or means that we have to deal with criminal acts or major dangers and to deal with threats from these dangers (The criminal sanction is the best available device we have for dealing with gross and immediate harms and treats of harm).

Apart from the use of criminal sanctions as a means of overcoming criminal acts and maintaining public order, the purpose of punishment is also no less important in seeking a justification for the use of punishment so that punishment becomes more functional. Initially, punishment was only intended to impose punishment on law violators. However, in its development, punishment is always related to the goals to be achieved with the punishment. In essence, Herbert L Packer stated that there are 4 theories which are the objectives of punishment, namely:

1. For Retribution (Retributive Theory or Absolute Theory); There are two main versions of the retributive theory, namely revenge and atonement. Revenge is a justification rooted in human experience that every attack carried out by someone will cause a reaction from the party being attacked. For example, imposing the death penalty on perpetrators of murder. Meanwhile, penance means that only by suffering as a result of punishment can criminals atone for their sins so that punishment that takes a long time is considered normal.
2. For Prevention (Prevention Theory/Deterrence) There are two versions of prevention, namely general prevention and specific prevention. General prevention is based on the assumption that the punishment of individual criminals will set an example for other individuals so that they will not commit the same crime. This general prevention uses the influence of punishment to be aimed at the general public, meaning that the prevention of criminal acts is to be achieved through punishment by influencing the behavior of members of the community so that they do not commit criminal acts through the establishment of laws that are repressive towards certain criminal acts. Meanwhile, special prevention is based on the assumption that punishing criminals will have a deterrent effect on perpetrators not to repeat criminal acts in the future. This special prevention directly directs the impact of punishment on the person convicted so that they do not commit another crime by punishing the convicted person forever in prison. For example, the imposition of serious penalties on perpetrators of criminal acts in the field of narcotics
3. To make the perpetrator helpless (Incapacitation); The aim of punishment according to this theory is almost the same as the prevention theory, namely that a convict does not repeat his criminal act, the convict must be imprisoned forever so that he does not have the opportunity and ultimately becomes powerless to commit another criminal act.
4. For correctional or resocialization (rehabilitation); The aim of punishment is to educate the perpetrator of a criminal act so that he can come to his senses and return to society. Even though the meaning, nature, form and objectives vary, the presence of crime as a means of eradicating criminal acts is still very much needed by society because crime is considered the only final answer in eradicating criminal acts which is still adhered to today. However, this does not mean that with criminal law all problems will end. One of the main problems in crime that is often debated by legal experts is the criminal issue, in addition to other main problems, namely the problem of criminal acts and the problem of error. Each of these three main issues has its own problems, each of which is closely related to basic human issues, namely human rights.⁹

Criminal matters will give rise to problems regarding the administration of punishment as well as problems regarding the implementation of the sentence. Meanwhile, the issue of criminal acts will involve issues of criminalization and decriminalization with all the conditions contained therein. Meanwhile, the problem of errors will involve various very complicated issues. For example, regarding the subject of criminal law in the form of corporations and the issue of strict liability (a form of liability that does not require fault) which has not yet been resolved in relation to the drafting of the new Draft Criminal Code (KUHP). In connection with this criminal issue, Sudarto stated that what is very important in criminal law is the conditions to enable criminal prosecution. If the first thing is detailed further, it can be said that in criminal law there are three main issues: first, regarding prohibited acts, second, regarding people who violate the prohibition, third, regarding the penalties that are threatened against the offender.¹⁰

The criminal issue is a very sensitive issue, considering that this issue is closely related to human dignity. Especially in the current era, where demands for recognition and respect for Human Rights are very prominent as a result

⁹Muladi, *Conditional Criminal Institutions*, (Bandung: Alumni, 1985), p. 16

¹⁰Sudarto, *Law and Criminal Law*, (Bandung: Alumni, 1982), p. 150.

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of the emergence of democratization and globalization. The threat of the death penalty is a social defense, according to Hartawi AM "The death penalty is a tool of social defense to prevent the general public from disasters and dangers or threats of major dangers that may occur and will befall the community which has caused or caused misery and disrupted social life. , religion and state".¹¹

The continuation of the issue of punishment is the process of internalization and/or transformation of religious values and noble values of society which should become basic or philosophical values in basic law and national legal materials in line with the incessant demands for reform of the Criminal Code (KUHP) and revision of the Drug Law as a means of achieving state goals. To achieve the state's goal, namely a prosperous, just and prosperous country, a conducive atmosphere is needed in all aspects, including legal aspects. To accommodate the needs and aspirations of its people, the Indonesian state has determined social policies in the form of policies to realize social welfare (social welfare policy) and policies to provide social protection (social defense policy).¹²

One of the policies to provide social protection (social defense policy) is efforts to prevent and deal with actual or potential criminal acts. All efforts to prevent and overcome criminal acts are included in the area of criminal policy. Two central problems in criminal policy using penal means (criminal law) are the problem of determining:¹³ 1. What actions should be made into criminal acts, and 2. What sanctions should be used or imposed on the violators. Efforts to overcome all forms of criminal acts are always being pursued, the criminal law policies adopted so far are none other than steps that are continuously explored and studied so that efforts to overcome criminal acts are able to optimally anticipate criminal acts which factually continue to increase. To protect society from threats and harassment from criminal acts, it is necessary to use criminal law which is actually a criminal political problem, namely a rational effort to overcome criminal acts. In social and state life, this is a policy of the state apparatus.

D. RESEARCH METHODS

Approach Method This research uses a normative juridical approach, namely by reviewing or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the legal system that regulates human life. So the research for this paper is understood as library research, namely research on secondary data.

Normative legal research is research carried out by examining library materials. This normative legal research or literature includes:

- a. Research into legal principles;
- b. Research on legal systematics;
- c. Research on the level of vertical and horizontal synchronization;
- d. Comparative law; And

e. Legal history. In this research the author uses legal research in concreto which is an attempt to find out whether the law is suitable to be applied in concreto to resolve a particular case and where the legal regulations can be found, which is included in legal research and is called legal research. Legal research in concreto requires the completion of an inventory of positive law applicable in abstracto. In this type of legal research, legal norms in abstract are needed to function as major premises, while the relevant facts in the problem are used as minor premises. In preparing this paper, one of the research specifications, namely descriptive analytical research, will be used. It is descriptive analytical in nature because this research is intended to provide a detailed, systematic and comprehensive description of everything, both legislation and legal theories. This paper is about the implementation of positive law which concerns the issue of implementing criminal sanctions against perpetrators of drug crimes.

Secondary data in this research includes: a. Primary legal sources, namely library materials that contain new or up-to-date scientific knowledge or new understanding of known facts or ideas. Primary legal sources consisting of: 1) Books and opinions of scholars; 2) Various laws and regulations concerning drug crimes, namely: a) Criminal Code (KUHP); b) Legislation concerning Narcotics Law; c) Legislation concerning Psychotropic Substances; b. Secondary legal sources, namely library materials that contain information about primary materials or are legal materials that are closely related to primary legal materials and can help analyze and understand primary legal materials³¹. Secondary legal sources include: 1) Abstract; 2) Index; 3) Bibliography; 4) Government Publishing; 5) Other reference materials. c. Tertiary legal sources consist of: 1) Big Indonesian Dictionary; 2) Improved Spelling Guidelines; 3) Dissertation or Thesis.

¹¹Treasure. AM, in Andi Hamzah and A. Sumangelipu, *Death Penalty in Indonesia*, (Jakarta: Ghalia Indonesia, 1983), p. 29.

¹²Barda Nawawi Arief, *Law Enforcement Issues and Crime Prevention Policies*, (Bandung: PT Citra Aditya Bakti, 2001), p. 73.

¹³Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Bandung: Citra Aditya Bakti, 2005), p. 29.

E. CRIMINAL SANCTIONS

1. Definition of Crime and Criminal Sanctions

In fact, "criminal" is only a "tool", namely a tool to achieve the goal of punishment. In essence, the history of criminal law is the history of crime and punishment which always has a close relationship with the problem of criminal acts, which are humanitarian problems and social problems that are always faced by every form of society. Where there is society, there is crime. Criminal acts are always closely related to values, structure and society itself. So whatever human efforts to eliminate it, criminal acts cannot possibly be resolved because criminal acts cannot be erased but can only be reduced or minimized in intensity. When viewed from its philosophy, punishment has very diverse meanings. R. Soesilo uses the term "punishment" to refer to the term "criminal" and he formulates that what is meant by punishment is a feeling of discomfort (sangsara) imposed by a judge with a sentence on a person who has violated the criminal law.¹⁴

In general, the term criminal is often interpreted the same as the term punishment. But these two terms actually have different meanings. According to the author, the distinction between the two terms above needs to be paid attention to, because their use is often confused. Punishment is a general understanding, as a sanction that causes suffering or suffering that is deliberately inflicted on someone. Meanwhile, criminal is a special meaning related to criminal law. As a specific meaning, there are also similarities with the general meaning, as a sanction or suffering that is suffered. The term "criminal" is certainly more appropriate to use a term that is specifically commonly used in criminal law.

Types of Criminal Sanctions When Wetboek van Strafrecht voor Nederlands Indie came into force in Indonesia based on Koninklijk Besluit dated 15 October 1915 Number 33, Staatsblad 1915 Number 732 Number 732 in conjunction with Staatsblad 1917 Number 497 and Number 645, criminal penalties in Indonesia from 1 January 1918 only recognized two types of punishment, namely basic punishment and additional punishment. Wetboek van Strafrechts voor Nederland Indie based on Article VI of Law Number 1 of 1946, the name was changed to the Criminal Code (KUHP). In Article 10 of the Criminal Code (KUHP) there are two types of crimes, namely the main crime which consists of:

- (1) Death penalty;
- (2) Imprisonment;
- (3) Imprisonment;
- (4) Criminal fine

(by Law Number 20 of 1946, additional criminal cover-up). The additional penalties consist of:

- (1) Revocation of certain rights,
- (2) Confiscation of certain items and
- (3) Announcement of the judge's decision.

The types of crimes as contained in Article 10 of the Criminal Code (KUHP) have been formulated inseparable from the conditions of society that existed at the time the Criminal Code (KUHP) was formed. Thus, it is not an exaggeration that in drafting the new Indonesian Criminal Code (KUHP) which will replace the Criminal Code (KUHP) originating from WvS, it is necessary to review the types of crimes so that they can be adjusted to current conditions. One of the main types of punishment that needs attention is the death penalty, which has long been controversial.

Purpose of Sentencing Based on studies conducted by various legal experts, it is said that the development of criminal theory tends to move from the backward-looking principle of "punishing" towards forward-looking "building" ideas. Criminal law reflects the image of its time and depends on the thoughts that live in society.

F. NARCOTICS

1. Definition of Narcotics

Narcotics or Narcotics and Drugs (dangerous substances) are terms that are often used by law enforcement and the public. Narcotics are said to be dangerous substances not only because they are made from chemicals but also because of their nature which can harm the user if used contrary to or against the law. Narcotics, Psychotropics and Addictive Substances are medical terms for a group of substances which, if they enter the human body, can cause dependence (addictive) and affect the working system of the brain (psychoactive). This includes types of drugs, materials or substances whose use is regulated by law and other legal regulations as well as those that are not regulated but are often misused, such as alcohol, nicotine, caffeine and inhalants/solvents. So the term that is actually more appropriate to use for this group of substances that can affect the brain's working system is NAPZA (Narcotics, Psychotropics and Addictive Substances) because this term refers more to the term used in the Narcotics and Psychotropics Law.

¹⁴See: R. Soesilo, Criminal Code (KUHP) and complete comments article by article, Politeia Bogor, 1996, p. 35, See also: R. Sugandhi, Criminal Code with explanations, National Business Surabaya, 1980, p. 12.

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Narcotics or more precisely drugs are drugs, substances and substances that are not considered food. Therefore, if this group of substances is consumed by humans, either by inhaling, sucking, swallowing or injecting, it will affect the central nervous system (brain) and will cause dependence. As a result, the brain's working system and the vital functions of other body organs such as the heart, respiration, blood circulation and so on will increase when consumed and will decrease when not consumed (becoming irregular). The word narcotics comes from the Greek word "narke" which means being drugged so you don't feel anything. Some people think that narcotics comes from the word "narcissus" which means a type of plant that has flowers that can cause people to become unconscious.¹⁵ Apart from that, the medical pharmacological definition of narcotics according to the Indonesian Encyclopedia IV (1980: 2336) is a drug that can relieve pain originating from the visceral area and can cause stupor effects (dazed or conscious but must be suppressed) and addiction. The effects of narcotics are that apart from causing unconsciousness, they can also cause delusions/hallucinations and cause stimulants. Before the birth of Law no. 5 of 1997 concerning Psychotropic Substances and Law no. 7 of 1997 concerning Narcotics, in Indonesia there is no clear distinction between narcotics and psychotropic substances so they are often grouped together.

M. Ridha Ma'roef stated that there are two types of narcotics, namely natural narcotics and synthetic narcotics. Included in the category of natural narcotics are various types of opium, morphine, heroin, marijuana, hashish, codeine and cocaine. Mini-style narcotics are included in the narrow definition of narcotics, while synthetic narcotics is a broad definition of narcotics and includes hallucinogens, depressants and stimulants.¹⁶

Classes of drugs that are often misused clinically can be divided into several groups, namely:

- a. Narcotic drugs such as opium, morphine, heroin and so on.
- b. Hallucinogenic drugs such as marijuana, LSD, mescaline and so on.
- c. Depressant drugs such as sleeping pills (hypnotika), reliever drugs (sedativa) and sedatives (tranquillizer).
- d. Stimulant drugs such as amphetamine, phenmetrazine.

2. How Narcotics Work

Drugs consumed by swallowing will enter the stomach and then into the blood vessels. Meanwhile, if it is smoked or inhaled, the drug will enter the blood vessels through the nose and lungs. If injected, the substance will enter the bloodstream and the blood will carry it to the brain (central nervous system). All types of drugs will change the feelings and way of thinking of people who consume them, such as changing their mood to become calm, relaxed, happy and feeling free. Changes in the mind such as stress disappearing and imagination increasing. Behavioral changes such as increasing familiarity with others but getting out of control. Feelings like this are what drug users initially seek. Drugs produce a feeling of "high" by changing the biochemical arrangement of brain cell molecules in the Limbus system (the part of the brain that is responsible for emotional life, where in the Limbus there is the Hypothalamus, namely the pleasure center of the brain) which is called neuro-transmitters. The human brain is equipped with tools to strengthen feelings of pleasure and avoid pain and other unpleasant sensations, in order to help humans fulfill basic needs such as hunger, thirst and sleep. This mechanism is a self-defense mechanism. If we are hungry, the brain will send a message to find the food we need. Things like this are what become addiction if we consume drugs and what happens in addiction is a kind of learning of brain cells in the hypothalamus (pleasure center). If you feel good, the brain will release neuro-transmitters which convey the message that this substance is useful for the body's defense mechanisms, so repeat use again. If we use drugs again, we will feel pleasure again and the brain will record this and make it a priority. As a result, the brain will create a "wrong program" as if we really need drugs as a self-defense mechanism until finally addiction occurs.

G. NARCOTICS CRIME

1. Narcotics in Indonesian Legislation

Historically, legislation regulating narcotics can be divided into several stages, namely:

1. The validity period of various Regie Ordonantie;

At this time the regulations regarding narcotics are not uniform because each region has its own Regie Ordonantie, such as Bali Regie Ordonantie, Java Regie Ordonantie, Riau Regie Ordonantie, Aceh Regie Ordonantie, Borneo Regie Ordonantie, Celebes Regie Ordonantie, Tapanuli Regie Ordonantie, Ambon Regie Ordonantie and Timor Regie Ordonantie. Of the various Regie Ordonantie, the Bali Regie Ordonantie is the oldest regulation contained in Stbl 1872 No. 76. Apart from that, narcotics are also regulated in:

- a. Morphine Regie Ordonantie Stbl 1911 No. 373, Stbl 1911 No. 484 and No. 485;
- b. Opium Regie Ordonantie Stbl 1911 No. 494 and 644, Stbl 1912 No. 255;

¹⁵Hari Sasangka, *Narcotics and Psychotropics in Criminal Law*, Mandar Maju, Bandung, 2003. Pg.35

¹⁶*Ibid* p.34.

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c. Westkust Regie Ordonantie Stbl 1914 No.562, Stbl 1915 No. 245;

d. Bepalingen Opium Premien Stbl 1916 No. 630.

2. Entry into force of the Verdovende Midellen Ordonantie (Stbl 1927 Number 278 in conjunction with Number 536); In accordance with the provisions of Article 131 IS, the regulations on Nederland Indie Drugs are adjusted to the drug regulations in force in the Netherlands (principle of concordance). The Governor General with the approval of Raad Van Indie issued Stbl 1927 No. 278 jo No. 536 concerning the Verdovende Midellen Ordonantie which is translated as the Drug Law. This law aims to unify the regulations regarding opium and other drugs which are spread across various regulations. In this Law, changes are also made and reconsideration of certain matters that have been regulated in previous regulations. Verdovende Midellen Ordonantie Stbl 1927 No. 278 jo No. 536 dated 12 May 1927 and came into effect on 1 January 1928. The provisions of this law then withdrew 44 previous laws in order to realize the legal unification of narcotics regulation in the Dutch East Indies.

3. The enactment of Law no. 9 of 1976 concerning Narcotics;

This law regulates narcotics more broadly by containing heavier criminal threats than previous regulations. Law no. 9 of 1976 came into force on July 26 1976 and was published in the Republic of Indonesia State Gazette No. 3086. Matters regulated in this Law are as follows:

- a. Regulates the types of narcotics in more detail;
- b. The punishment is commensurate with the types of narcotics used;
- c. Regulates health services for addicts and their rehabilitation;
- d. Regulates all activities related to narcotics including cultivation, compounding, production, trade, transportation and use of narcotics;
- e. The criminal procedure is special;
- f. Providing premiums for those who have contributed to dismantling narcotics crimes;
- g. Organize international cooperation in countering narcotics;
- h. Much of the criminal material deviates from the Criminal Code (KUHP) and carries more serious criminal threats.

Background to the replacement of Verdovende Midellen Ordonantie Stbl 1927 No. 278 jo No. 536 with Law no. 9 of 1976 can be seen in the explanation of Law no. 9 of 1976, including matters to be considered regarding the development of modern means of transportation, both land, sea and air, which have an impact on the rapid spread of the illicit narcotics trade in Indonesia.

4. The enactment of Law no. 22 of 1997 concerning Narcotics.

This law came into effect on September 1 1997 and was published in the Republic of Indonesia State Gazette of 1997 No. 3698. As for the background to the promulgation of Law no. 22 of 1997 is an increase in control and supervision as an effort to prevent and eradicate the abuse and illicit trafficking of narcotics. Narcotics crimes are generally not carried out individually and independently but are carried out jointly and even by syndicates that are well organized, neat and secretive. Apart from that, transnational drug crimes are carried out using sophisticated modus operandi and technology, including safeguarding the proceeds of drug crimes. The development of the quality of drug crimes has become a very serious threat to human life. Apart from that, considering that Indonesia has ratified the United Nations Convention on the Eradication of Illicit Trafficking in Narcotics and Psychotropics in 1988 and the Psychotropics Convention in 1971 by issuing Law no. 7 of 1997 concerning Ratification of the United Nations Convention Concerning the Eradication of Illicit Trafficking in Narcotics and Psychotropic Substances and Law no. 8 of 1996 concerning Ratification of the Psychotropics Convention. Law no. 22 of 1997 has a much broader scope than previous regulations, both in terms of norms, material scope and the threat of heavier penalties.

2. Narcotics in Criminal Law

Criminal acts in the field of narcotics are regulated in Articles 78 to 100 of Law no. 22 of 1997 which is a special provision. Although the Narcotics Law does not clearly state that all criminal acts regulated therein are criminal acts, this is because narcotics are only intended for medical purposes and the development of science. So, apart from these interests, it can be confirmed that it is a criminal offense considering the great danger posed by drug abuse. Narcotics Law no. 22 of 1997 also recognizes a minimum criminal threat, but this minimum criminal threat is only intended to increase the punishment and not to be imposed on the main act. A minimum criminal threat can only be imposed if the criminal act is: preceded by an evil conspiracy, carried out in an organized manner and carried out by a corporation. This is different from the Psychotropics Law, where the minimum criminal threat is actually imposed on the main act, while the increased punishment is intended for criminal acts committed in an organized manner or with a malicious conspiracy, there is no minimum criminal threat.

DISCUSSION

A. POLICY FOR FORMULATION OF CRIMINAL SANCTIONS AGAINST DRUGS CRIMINAL OFFENDERS ACCORDING TO THE PROVISIONS OF LAW NO. 22 OF 1997 CONCERNING NARCOTICS AND LAW NO. 5 OF 1997 CONCERNING PSYCHOTROPICS.

Indonesia appears to be a bit late in forming legal instruments to tackle drug crimes. This can be seen from the ratification of the United Nations Convention on the Eradication of Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 which was recently implemented by issuing Law no. 7 of 1997 concerning Ratification of the United Nations Convention Concerning the Eradication of Illegal Trafficking in Narcotics and Psychotropic Substances and with and ratification of the 1971 Psychotropic Substances Convention (Convention on Psychotropic Substances 1971) which has just been implemented with Law no. 8 of 1996 concerning Ratification of the Psychotropics Convention. Then in 1997 the Government issued Law no. 5 of 1997 concerning Psychotropic Substances and Law No. 22 of 1997 concerning Narcotics as a replacement for the old Law, namely Law no. 9 of 1976 concerning narcotics.

The formation of regulations or legal instruments in Indonesia is considered too late because it was carried out after many incidents of drug abuse increased and there were obstacles in dealing with it. These two laws (Law No. 5 of 1997 and Law No. 22 of 1997) basically regulate that psychotropics and narcotics are only used for the purposes of health services and science. If you look at it in terms of rules, it is quite good and most of the rules contained in the two laws are similar. Starting from the form, distribution and use of these two items, it is very strict. There is no other reason except that drugs are only for the sake of medicine and science. Use and distribution outside these purposes is a crime. Crimes related to drugs are considered to be very dangerous to the nation and state, the perpetrators are threatened with very severe penalties in the form of imprisonment and fines. In narcotics crimes, it turns out that the criminal threat is more severe than psychotropic crimes, even though narcotics do not cause a dependency syndrome. The use of narcotics for all groups is a crime, while those who use psychotropic substances can be punished only for those who use class I psychotropic substances. Foreigners who commit psychotropic or narcotics crimes, in addition to receiving the basic criminal sentence, also receive additional criminal punishment in the form of expulsion from the territory of the Unitary State of the Republic of Indonesia. On the other hand, Indonesians who commit crimes abroad, when they return to Indonesia, will not escape the provisions of the Drugs Law.

1. Types of Actions that Qualify as Narcotics Crimes.

ad1 Narcotics Crimes Related to Category I Narcotics.

As has been stated, class I substances or narcotics have a very high potential to cause dependence. Therefore, its use is only permitted for the purpose of developing science and not for therapy. The definition of scientific development includes the purposes of education, training, skills and research and development. Even in research, this type of class I narcotics can only be used on a limited basis. The use of class I narcotics outside the interests of science is a criminal offense, such as:

- 1) Without right and against the law, planting, maintaining, possessing, having in stock, storing and controlling class I narcotics;
- 2) Without rights and against the law, possessing them for their own benefit or for supply or to control class I narcotics. Both of the above acts are threatened with Article 78 Paragraph (1) letters a and b of Law no. 22 of 1997 concerning Narcotics.
- 3) Without rights and against the law, producing, processing, extracting, converting, assembling or providing class I narcotics (referred to in Article 9). This act is threatened with Article 80 Paragraph (1) letter a of the Narcotics Law.
- 4) Without rights and against the law, carrying, sending, transporting or transiting class I narcotics. This act is threatened with Article 81 Paragraph (1) letter a.
- 5) Without any right and against the law, importing, exporting, offering for sale, distributing, selling, purchasing, handing over, receiving, becoming an intermediary in buying or exchanging narcotics of class I. Threatened with a crime in Article 82 Paragraph (1) letter a.
- 6) Using narcotics against other people or providing class I narcotics. Threatened with Article 84 Paragraph (1) letter a.
- 7) Using class I narcotics for oneself. Threatened with Article 85 letter a.
- 8) The heads of certain drug factories who produce class I narcotics are not for the purposes of developing science and the heads of pharmaceutical wholesalers who distribute class I narcotics are not for the purposes of developing science. Threatened with Article 99 letters c and db

ad2. Narcotics Crimes Related to Production.

We need to know that narcotics can only be produced by factories that have obtained special permission from the Indonesian Minister of Health. The definition of production is the activity or process of preparing, processing, making, producing, packaging and/or changing the form of narcotics including extracting, converting or assembling narcotics to produce drugs (contained in Article 1 Paragraph (2)).

Actions that are closely related to production are processing, extracting, converting, assembling or providing. The definition of a drug factory according to Article 1 Paragraph (10) is a company that is a legal entity and has permission from the Minister of Health to carry out production and distribution activities of drugs and medicinal substances, including narcotics. In relation to production permits, Article 8 Paragraph (1) of the Narcotics Law opens up the possibility of granting permits to more than one drug factory that has the right to produce narcotic drugs. However, this is done very selectively with the aim of making narcotics control and supervision easier. In the context of monitoring the production process, based on Article 8 Paragraph (2), the Minister of Health carries out "separate controls", namely controls that are carried out separately from other controls related to the annual narcotics needs plan, both needs in the form of narcotics raw materials and in the form of drugs as the final product of the production process. Criminal threats for those who produce narcotics without rights and against the law are regulated in Article 80 Paragraph (1) letters b and c.

ad3. Narcotics Crimes Related to Science.

Scientific institutions, whether run by the government or private parties, whose specific activities or one of their functions are carrying out experimental, research and development activities, can obtain, plant, store and use narcotics for scientific purposes. However, you still have to obtain official permission first from the Minister of Health as regulated in Article 10 of the Narcotics Law. The definition of a Scientific Institution includes government agencies which, because of their duties and functions, have the authority to carry out supervision and investigation as well as eradicate the illicit trafficking of narcotics. Article 99 of the Narcotics Law threatens with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 200,000,000,- (two hundred million rupiah) towards:

- Heads of hospitals, health centers, medical centers, government-owned pharmaceutical storage facilities, pharmacies, and doctors who distribute class II and III narcotics not for the purposes of health services;
- Leaders of scientific institutions who plant, buy, store or control narcotic plants not for the purposes of developing science;
- Leaders of certain drug factories that produce class I narcotics not for the benefit of scientific development;
- Leaders of pharmaceutical wholesalers who distribute class I narcotics not for the sake of developing science or distribute class II and III narcotics not for the benefit of health services and/or not for the benefit of developing science.

2. Types of Sanctions Applied to Narcotics Crime Perpetrators.

In a narcotics case trial, the judge can hand down a verdict according to the severity of the offense as stipulated in Law no. 22 of 1997 concerning Narcotics. Even though crimes in the field of narcotics are a special type of crime, the principle of presumption of innocence must still be upheld considering that defendants are also human beings who have human rights. It cannot be denied that drug crimes have a very dangerous impact both on society and on the future of the nation and state. Once someone falls into drug abuse, it will take a long time for them to recover like normal people in general. In fact, in certain cases, rehabilitation efforts are often unable to guarantee recovery when the lives of drug users can no longer be saved. The death rate caused by drugs is also increasing. Data from the National Narcotics Agency (BNN) shows that every day in Jakarta 2-3 people die per day due to drug abuse. The danger of infectious diseases Hepatitis B/C and HIV/AIDS is also increasing. 80% of drug users using injection needles are confirmed to suffer from Hepatitis B/C and 40-50% are infected with HIV/AIDS. The cause is that syringes are not sterile and are used interchangeably.

Law No. 22 of 1997 concerning Narcotics which was promulgated on September 1 1997 in the Republic of Indonesia State Gazette of 1997 number 67 and additional RI State Gazette number 3698 has been in effect since the law was promulgated. Before the birth of Law No. 22 of 1997, our country implemented Law No. 9 of 1996 concerning Narcotics (State Gazette of the Republic of Indonesia of 1976 number 36, additional State Gazette of the Republic of Indonesia number 3086), but its existence can no longer be maintained, due to the development of the quality of narcotics crimes which have become a very serious threat to human life. Apart from that, Indonesia is also bound to ratify the new provisions in the United Nations Convention on the Eradication of Illicit Traffic in Narcotics and Psychotropic Substances of 1988, through Law no. 7 of 1997 concerning the Ratification of the United Nations Convention Against Illicit Tariffs in Narcotic Drugs and Psychotropic Substances, 1988. In essence, this Narcotics Law has the same regulations as the Psychotropics Law. The purpose of using narcotics is exactly the same as the purpose of psychotropic substances, namely for the benefit of health services and for the development of science. Because this is the aim, in order to achieve this aim, Article 3 of the Narcotics Law states that Narcotics Regulation aims to:

- a. Guarantee the availability of narcotics for the purposes of health services and/or scientific development;

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- b. Prevent narcotics abuse; And
- c. Eradicating the illicit trafficking of narcotics.

Then the Narcotics law also makes it easier to achieve the intended goal, namely preventing narcotics abuse and eradicating the illicit trafficking of narcotics. These two things are related to each other. So according to this law, the availability of narcotics is important but must not be misused. Narcotics abuse is punishable by crime. The criminal threats in the Narcotics Law vary according to the degree of the criminal act committed. The forms of punishment still refer to the Criminal Code (KUHP), namely death penalty, life imprisonment, imprisonment and fines. Not different from what is described in the Narcotics Law, this section will also directly quote articles that threaten perpetrators of criminal acts with the death penalty.

Based on the above, it can be seen that the death penalty is still a criminal threat that is considered to best satisfy the objectives of punishment. Talking about criminal sanctions cannot be separated from the aim of punishment as retaliation imposed by the state as a strong reaction to actions that are prohibited or ordered by criminal law, which are carried out by someone or several people and have caused harm to other parties. In criminal law theory, according to leading criminal law scholars, the aim of crime is prevention, both general prevention and special prevention. In many literatures it is also stated that the objectives of criminal law and punishment are always the initial thoughts of scholars. Penology experts also discuss criminal sanctions in more depth.

Criminal sanctions are the most special sanctions, because the legal interests that are intended to be protected by the rules of criminal law (schultznorm) are human life, body (freedom), honor and property, in addition to state interests. Although the purpose of punishment is not something new, the impact of punishment regarding the continuation of the life of the convict, especially the impact of stigmatization on the convict and his family, has given rise to newer trends in criminal law that create other types of punishment that are considered more respectful. human dignity, apart from wanting to achieve the goal of punishment itself. For this reason, the imposition of criminal sanctions must be the most important thing for the judge to consider, because it concerns these interests, which are different from civil sanctions or administrative sanctions which only relate to material characteristics. JE Sahetapy has warned that "Criminal impositions (een strafpleggen), in my opinion must be endeavored to be in accordance with and balanced with the values of legal consciousness, values which move according to developments in space, time and circumstances which require the imposition of a punishment of a special nature,¹⁷ as a reaction to actions that violate the order (law) that is imposing a crime.

Discussions about the existence of the death penalty in the criminal law system in Indonesia cannot be separated from discussions about the purpose of punishment. Discussion of the purpose of punishment will lead to an understanding or analysis of the extent to which types of criminal sanctions are relevant and therefore worth maintaining in a criminal law system. In other words, to measure the extent to which a type of criminal sanction can fulfill the criminal objectives determined by the criminal law system in question. This is because crime is essentially only a "means" to achieve goals. Based on this opinion, to see the basis for justifying the death penalty in the criminal law system in Indonesia, we will look at whether the death penalty in Indonesian legislation (the Criminal Code (KUHP) and other laws) can fulfill the objectives of punishment set out in the criminal law system in Indonesia. .

However, considering that in the criminal law system in Indonesia the objectives to be achieved by criminal law and criminal law have never been formally formulated in law, the criminal objectives that will be used as a benchmark and basis for justification in discussing the death penalty are more theoretical in nature. Efforts to seek justification for the death penalty for drug crimes are also linked to the purpose of punishment in the Concept/Draft of the Criminal Code (KUHP) as the "embryo" of the Indonesian criminal law system. This effort is intended to see to what extent the Concept/Draft of the Criminal Code (KUHP) accommodates ideas about the death penalty.

A. POLICY FOR FORMULATION OF CRIMINAL SANCTIONS IN THE UPCOMING NARCOTICS LAW AGAINST PERSONS OF NARCOTICS CRIMES IN INDONESIA.

Based on the regulations of the Law on Narcotics and Psychotropic Substances, drug crimes are punishable by high and serious penalties, with the possibility of the defendant being sentenced to a maximum sentence, namely the death penalty in addition to imprisonment and a fine. Considering that narcotics and psychotropic crimes are included in a special type of crime, the criminal threat against them can be imposed cumulatively by imposing 2 main types of punishment at once, for example imprisonment and a fine or death penalty and a fine. In the Criminal Code (KUHP), it is not possible to impose two basic sentences at the same time, so no punishment is imposed in the form of imprisonment and a fine because the Criminal Code (KUHP) only requires one of the main crimes.

¹⁷JE Sahetapy, *Death Penalty in the Pancasila State*, Citra Aditya Bandung, 2007, p. 37

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However, as a special crime, for drug and psychotropic drugs crimes, judges are allowed to sentence the defendant to two main crimes at the same time which generally take the form of corporal punishment (in the form of death penalty, life imprisonment or imprisonment) with the aim of ensuring that it burdens the perpetrator so that criminal acts can be overcome in society. In the Indonesian criminal system, the death penalty is the most severe punishment of the many sentences imposed on perpetrators of criminal acts, because this punishment concerns the human soul. The implementation of the death penalty always invites controversy. This does not only happen in Indonesia, but this controversy also occurs in a number of European countries that have canceled the death penalty. Several opinions state that the death penalty is not in accordance with the teachings of Islamic law, Pancasila and the 1945 Constitution. Apart from that, the death penalty is contrary to human rights based on Article 28 A of the 1945 Constitution, second amendment, Article 4 and Article 33 paragraph (2) of the Law. Human Rights Law no. 39 of 1999 that every person is free from enforced disappearance and loss of life and is contrary to Article 6 paragraph (1) of the ICCPR that every person has the right to life.

To see how important it is that the values originating from Pancasila are used as the basis or basis for national and state policies, including legislative policies regarding the death penalty, we will examine the extent of the relationship (position) of Pancasila in social, national and state life in Indonesia. The Indonesian social system is basically a balance between individual and social characteristics, both of which are human nature. This conception of society has given rise to the basic assumption that emphasizing one of human nature's characteristics will result in disharmony or imbalance in society's life.

Thus, the death penalty is essentially not in conflict with Pancasila. However, in order to find out whether the main value contained in Pancasila, namely the balance between individual interests and the interests of society, is reflected in the death penalty, the following will explain this matter. From the perspective of the state system, these basic values in Indonesian society have developed under the inspiration of great world ideas to become the basis of modern state philosophy. In this state context, Pancasila is essentially a synthesis between the values that grow from the soul and culture of the Indonesian nation and the great ideas of the world. Based on the discussion above, it can be clearly concluded that both in the social system and in the state system in Indonesia, the basic values that animate it are the values of balance or monodualism which have been formulated in Pancasila. In the following, we will see to what extent the urgency of the values originating from Pancasila is used as direction, guidance and basis for national and state policies, especially policies in the field of law. It is understood that for the Indonesian people, Pancasila, apart from being a philosophy of life, is also the philosophy of the state. As the nation's philosophy of life, Pancasila is the soul of the nation, the personality of the nation, the means of the nation's life goals, the nation's outlook on life and is the source of all sources of Indonesian state law and also the noble agreement of the Indonesian nation in its statehood. The philosophical meaning of this inclusion is that the noble values in Pancasila must be clearly reflected in the legal system in Indonesia, including its criminal sub-system. Thus, the practical benchmark regarding law in Indonesia is none other than Pancasila as an abstraction of the noble values of Indonesian human life, which contains the legal ideals of the nation. Policies regarding the death penalty in current legislation tend to only protect the public, which is a reflection of the function of punishment as a tool to prevent crime. Meanwhile, the aspect of protecting individuals is given less attention. The absence of a balance of protection between individual interests and the interests of society in policies regarding the death penalty is clearly visible in the policies formulated in the Criminal Code (KUHP) that do not provide for the possibility of "modification/change/adjustment/review of criminal decisions that have permanent force" based on considerations due to the existence of "change/development/improvement in the convict himself." In this context, it can be argued that the current policy regarding the death penalty in the Criminal Code (KUHP) is less oriented towards the idea of "criminal individualization".

In the implementation of the death penalty for drug cases - which refers to the Criminal Code (KUHP) and its implementing regulations - it does not allow for modifications to the criminal law (changes/adjustments). In fact, many death row drug convicts have to wait for years without any change in sentence. Currently, only 3 people have been executed on death row for drug cases. This was stated by the Chief Executive of BNN, Commissioner General of Police, I Made Mangku Pastika.¹⁸ So it can also be said that those who are subject to the death penalty are also subject to imprisonment. So the implementation of the death penalty does prioritize the public interest by trying to punish the perpetrator not to commit the same crime, but does not protect the interests of individual perpetrators of drug crimes. Criminal sanctions, especially the death penalty, are like a double-edged sword, on the one hand criminal law protects the legal interests of the community but on the other hand it hurts the legal interests of the perpetrator. Thus there is a gap between "what should

¹⁸Research on Drug Abuse and Illegal Trafficking in Indonesia in 2003 and 2004, <http://www.bnn.go.id/konten.download> on Wednesday, June 10 2021, at 11.00 WIB

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be" and "the actual situation". By referring to the Pancasila benchmark where monodualistic balance values are substantial values that "should" be the values that should be implemented in law in Indonesia, the current policy regarding the death penalty contains very fundamental weaknesses.

The policy orientation regarding the death penalty which only tends to protect society by ignoring the protection of individuals is not in accordance with monodualistic ideas as a basic value in the Pancasila State philosophy of life. The idea of monodualistic balance should be directed at two main targets, namely "protection of society" and "protection of individual development". Applying the idea of monodualistic balance contained in Pancasila is not an easy thing, especially for serious crimes such as drugs. The threat of the death penalty, which aims to have a deterrent effect on the perpetrator and other people in society so that they do not do the same thing, must be applied. The current death penalty has a deterrent effect and prepares perpetrators to return to society. People who have been sentenced to death have very little chance of returning to society. So the threat of the death penalty for drug crimes does not entirely reflect monodualistic ideas as envisioned by Pancasila.

Policy for Formulating the Death Penalty for Drug Crimes in the Future and Efforts to find alternatives to the death penalty start from the fact that in its development the death penalty has become increasingly unpopular both for humanitarian considerations, philosophical considerations of punishment and economic considerations. If you look closely at the international trends above, there is a need to review the use of death penalty CLVII as a type of sanction that can be used in criminal law. In connection with the use of the death penalty as a type of criminal sanction in criminal law, efforts to review the "death penalty" seem to be a necessity. Bearing in mind, in a criminal context, this type of sanction is the heaviest sanction.

Barda Nawawi Arief stated¹⁹The death penalty needs to be maintained based on the idea of "avoiding society's demands/reactions that are vengeful/emotional/arbitrary/uncontrolled or have the character of "extralegal execution". This means that the death penalty provided in the legislation is intended to provide a channel for society's emotions/demands.

The absence of the death penalty in law is not a guarantee that there will be no death penalty in the reality of society. The recognition of the existence of the death penalty as a means to prevent crime can also be seen in the UN publication in 1994 which stated that even though in several countries such as Brazil, Colombia, Norway, Portugal and Spain the death penalty had been abolished and replaced with a more definite punishment, it was In general, the death penalty is still recognized as existing. Regulations on drugs in Indonesia are the implementation of international legal obligations born from international agreements, the Narcotics and Psychotropics Convention emphasizes that narcotics and psychotropics crimes are very serious crimes, the imposition of the death penalty for these crimes is actually one of the consequences of Indonesia's participation in the Narcotics Convention and psychotropic substances as regulated in Article 3 (6) of the Convention, the essence of which is for state parties to maximize the effectiveness of law enforcement in relation to narcotics and psychotropic crimes by taking into account the needs of the crime in question. Regarding the use of the death penalty in criminal law, the problem also shows the same direction as the use of punishment in general, so the problem is how to optimize the death penalty as a crime prevention tool on the one hand and how its negative impacts can be minimized. This negative impact is mainly related to the aspect of protecting individuals in the death penalty itself. Thus, the problem lies in how to contribute the protection aspect to the death penalty, so that the death penalty can provide protection to society on the one hand and to individuals on the other hand. Based on the above facts, it is clear that in the use of the death penalty, the main problem lies in the need to find an appropriate balance between the need for rehabilitation as a form of protection for individuals and the need to protect society.

For the reform of criminal law in terms of imposing the death penalty on perpetrators of drug crimes, the decision of the Constitutional Court which was read out in the plenary session on 30 October 2007, on the request for review of Law Number 22 of 1997 concerning Narcotics in particular the phrase "death penalty" became the basis and milestone for an understanding of the perspective on the death penalty in Indonesia, because if the pros and cons are continuously discussed, it can undoubtedly disturb and/or influence the atmosphere of confidence of law enforcers in making decisions. It is important to quote the Constitutional Court decision regarding the death penalty provisions which states; "Considering also that taking into account the irrevocable nature of the death penalty, regardless of the Court's opinion regarding whether the death penalty does not conflict with the 1945 Constitution for certain crimes in the law on narcotics which are requested for review in the a quo petition, the Constitutional Court is of the opinion that in the future, in the context of renewal of the national criminal law and harmonization of laws and regulations relating to the death penalty, the formulation, application and execution of the death penalty in the criminal justice system in Indonesia should pay serious attention to the following:

¹⁹Barda Nawawi Arief, *Reforming Criminal Law, in the Perspective of Comparative Studies*, Citra Aditya Bakti Bandung, 2005, p. 289

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- a. The death penalty is no longer a basic punishment, but rather a special and alternative punishment;
- b. The death penalty can be imposed with a probationary period of ten years which, if the convict behaves commendably, can be changed to life imprisonment or 20 years.
- c. The death penalty cannot be imposed on children who are not yet adults
- d. The execution of the death penalty against pregnant women and someone who is mentally ill is postponed until the pregnant woman gives birth and the mentally ill convict recovers.

Based on these two regulations, drug crimes are threatened with high and serious penalties, with the maximum possible sentence being the death penalty in addition to imprisonment and fines. Considering that drug and psychotropic drugs crimes are included in a special type of crime, the criminal threat against them can be imposed cumulatively by imposing 2 main types of punishment at once, for example imprisonment and a fine or death penalty and a fine. In the Criminal Code (KUHP), it is not possible to impose two basic sentences at the same time, so there is no punishment imposed in the form of imprisonment and a fine because the Criminal Code (KUHP) only requires one of the main punishments. However, as a special crime, for drug and psychotropic drugs crimes, judges are allowed to sentence the defendant to two main crimes at the same time which generally take the form of corporal punishment (in the form of death penalty, life imprisonment or imprisonment) with the aim of ensuring that it burdens the perpetrator so that criminal acts can be overcome in society. In the Indonesian criminal system, the death penalty is the most severe punishment of the many sentences imposed on perpetrators of criminal acts, because this punishment concerns the human soul.

CONCLUSION

1. Policy for formulating criminal sanctions against perpetrators of drug crimes according to the provisions of law no. 22 of 1997 concerning narcotics and law no. 5 of 1997 concerning psychotropics:
 - a. Types of acts that qualify as drug crimes include:
 - 1) Narcotics Crimes Related to Category I Narcotics
 - 2) Narcotics Crimes Related to Production;
 - 3) Narcotics Crimes Related to Science.
 - b. Types of Sanctions Applied to Drug Crime Perpetrators. Drug crimes are threatened with high and serious penalties with the maximum possible sentence being the death penalty in addition to imprisonment and a fine. Considering that drug and psychotropic drugs crimes are included in a special type of crime, the criminal threat against them can be imposed cumulatively by imposing 2 main types of punishment at once, for example imprisonment and a fine or death penalty and a fine. In the Criminal Code (KUHP), it is not possible to impose two basic sentences at the same time, so there is no punishment imposed in the form of imprisonment and a fine because the Criminal Code (KUHP) only requires one of the main punishments. However, as a special crime, for drug and psychotropic drugs crimes, judges are allowed to sentence the defendant to two main crimes at the same time, which generally take the form of death penalty, life imprisonment or imprisonment with the aim that the punishment burdens the perpetrator so that the crime can be overcome in society. So, the type of sanction that is often applied to perpetrators of drug crimes is the death penalty.
2. The policy for formulating criminal sanctions according to drug laws in the future for perpetrators of drug crimes in Indonesia is in line with the general provisions contained in the National Criminal Code (KUHP) Concept and in accordance with the decision of the Constitutional Court regarding the provisions on the death penalty for drugs by taking into account:
 - a. The death penalty is no longer a basic punishment, but rather a special and alternative punishment;
 - b. The death penalty can be imposed with a probationary period of ten years which, if the convict behaves commendably, can be changed to life imprisonment or 20 years
 - c. The death penalty cannot be imposed on children who are not yet adults
 - d. The execution of the death penalty against pregnant women and someone who is mentally ill is postponed until the pregnant woman gives birth and the mentally ill convict recovers.

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