

## Analysis of the Impact of the Implementation of the Death Penalty in the New Indonesian Criminal Code

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**ABSTRACT:** Law No. 1 of 2023 on the new Indonesian Criminal Code is a significant achievement in Indonesia's criminal law reform. One of the key aspects is the regulation of the death penalty, which can only be imposed based on a final and binding court decision. The 2023 Criminal Code classifies the death penalty as a special punishment and a last resort (*ultimum remedium*). A significant innovation is the 10-year probation period for death row inmates, which provides an opportunity to demonstrate remorse and behavioral change. This policy reflects a balance between the enforcement of justice and respect for human values and rehabilitation. Thus, the death penalty serves not only as a repressive sanction but also as a rehabilitative mechanism that safeguards the interests of society in an optimal manner.

**KEYWORDS:** Effect; Death Penalty; Criminal Code 2023.

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### I. INTRODUCTION

Every crime that occurs certainly has consequences, and the consequences that a person receives for their actions are certainly adjusted to the type of crime committed. Considering that Indonesia is a country based on the rule of law as stated in the 1945 Constitution Article 1 point 3, the law must be enforced for the sake of justice (Dewi, 2020).

The death penalty is one of the punishments or verdicts imposed by the court as the most severe punishment imposed on a person for their actions (Permaqi, 2015). It is referred to as the most severe punishment because its implementation is an attack on the right to life, which truly belongs to God. The death penalty is known in legal terms as *uitvoering*. The death penalty is the imposition of a criminal punishment that revokes the right to life of a person who has committed a criminal act that is regulated in the law and punishable by death. The death penalty means taking someone's life. However, every human being has the right to life (Harefa, 2022).

The death penalty has become one of the most controversial and complex forms of punishment in criminal law systems around the world, including in Indonesia. The history of the application of the death penalty in Indonesia cannot be separated from the long journey of the development of national criminal law, which has been influenced by various regimes and socio-political dynamics. During the Dutch colonial period, the death penalty was already known and applied as a punishment for serious crimes, especially in the context of social control and the enforcement of colonial power. The WvS Criminal Code (KUHP) in force at that time, which was a legacy of colonial law, regulated the death penalty as one of the main sanctions for certain crimes such as murder, treason, and other serious crimes.

The application of the death penalty in Indonesia has always sparked pros and cons among the public. Those in favor of the death penalty argue that it is still positive law regulated in various laws and regulations, so its validity must continue to be respected. Meanwhile, those who oppose the death penalty believe that it violates human rights because it infringes on the right to life, which is a right that cannot be diminished under any circumstances and by anyone (Manoppo, Pongoh, & Bawole, 2023).

After Indonesia's independence, the death penalty remained in the old Criminal Code, which is still in use today, albeit with various modifications and adjustments. However, since the late 20th century and early 21st century, there has been a wave of intense criticism and debate regarding the continuation of the death penalty, especially from a human rights perspective. Opposition to the death penalty has become an international issue. The international legal instrument that regulates the death penalty, namely the 1948 Universal Declaration of Human Rights (UDHR), is an international declaration on human rights that disagrees with the application of the death penalty because it violates the right to life (Pratiwi & Bagiastra, 2024). As stipulated in Article 3 of the UDHR, which reads: "Everyone has the right to life, liberty and security of person." A moratorium on the execution of the death penalty was once imposed by the Indonesian government in response to international pressure and domestic

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aspirations for criminal law reform. This moratorium marked an important period in which the state attempted to balance the need for strict law enforcement with respect for the right to life as a fundamental human right.

The debate on capital punishment in Indonesia is also influenced by complex social and political dynamics, including cases of serious crimes that have sparked strong reactions from the public and demands that the death penalty remain in place as a form of justice and deterrent. On the other hand, human rights groups, academics, and civil society organizations continue to advocate for the abolition of the death penalty on the grounds of the risk of miscarriage of justice, unfairness in the judicial process, and irreparable human rights violations.

In this context, Law Number 1 of 2023 concerning the National Criminal Code is a significant update to criminal law, including explicit provisions regarding the death penalty. The new Criminal Code contained in Law Number 1 of 2023 will come into effect 3 years from the date of its promulgation, namely in 2026, regulating the death penalty as an alternative measure of last resort to prevent criminal acts and protect society. It should be noted that the death penalty is not included in the basic criminal system. The death penalty is specified in a separate article to indicate that this type of punishment is truly special as a last resort to protect society.

With the enactment of the death penalty in the New Criminal Code, there is an urgent need to understand the broad impact of this provision on the criminal justice system and society. How this article affects judicial practice, whether the death penalty is effective as a crime deterrent, and how society and politicians respond to this policy are the main focus of analysis in this article. In addition, it is important to examine the challenges of implementation, including aspects of evidence, legal procedures, and potential abuses that could threaten the principles of justice and human rights.

### **II. FORMULATION OF THE PROBLEMS**

Based on the background description, this study will discuss two critical questions. First, how are the provisions on the death penalty regulated in Law No. 1 of 2023 concerning the new Indonesian Criminal Code (KUHP 2023)? Second, what impacts arise from the enactment of the death penalty in Law No. 1 of 2023 concerning the new Indonesian Criminal Code (KUHP 2023)?

### **III. RESEARCH METHOD**

This research is a type of normative legal research that focuses on studying the normative aspects of the law itself. This research does not look at the law based on facts or social events in the field, but rather delves into the main and supporting legal materials, such as legislation, legal doctrine, and court decisions (jurisprudence) and uses literature related to the topic being discussed (Marzuki, 2005).

### **IV. DISCUSSION**

#### ***A. The Death Penalty as Regulated in Law Number 1 of 2023 on the new Indonesian Criminal Code (KUHP 2023)***

According to Van Hamel, punishment or criminal sanctions can be justified for a person if the criminal sanctions (Dudy & Ashady, 2023): a) Are intended to enforce law and order, b) Are decided based on the limits of necessity. c) Have a preventive function, meaning they can prevent the perpetrator from committing other crimes, and d) The imposition of sanctions is based on a thorough investigation according to *criminele aetiologie* and the application of these sanctions respects or does not conflict with the fundamental interests/rights of the convicted person.

According to Edward Omar Sharif Hiariej, in essence, the threat of capital punishment is still necessary. The basis for his argument is that, apart from its deterrent effect, no religious teaching opposes the death penalty. *Crimina morte extinguntur*: crimes can be eradicated by the death penalty. *Mors omnia solvit*: the death penalty resolves the case. In addition, the death penalty serves as a counterbalance to the victims of crime (Hiariej, 2024).

Legal expert Rachmat states that the death penalty is a fundamental punishment recognized in the Indonesian positive legal system, as it is officially regulated in legislation (Rachman, 2018). The death penalty is expected to have a deterrent effect, both on criminals and potential criminals, while maintaining the authority of the government. The state has the primary responsibility to protect its citizens in all situations, including providing comprehensive legal protection. If the state fails to protect the lives of its citizens, this can undermine public trust and the authority of the state as a servant and protector of the people (Kandou & Ibrahim, 2024). Therefore, the death penalty is considered necessary to create conducive conditions and prevent serious crimes (Takaliuang, 2020).

The process of applying the death penalty in Indonesia is carried out with a highly selective mechanism, not arbitrarily, and is carried out in accordance with the applicable requirements and regulations in legislation, state institutional regulations, and the Criminal Code, all of which aim to uphold truth and justice in legal cases for both the perpetrator and the victim. The death penalty around the world is carried out in various ways, including beheading, crucifixion, hanging, drowning, beating to death, burning alive, stoning to death, shooting to death, and various other methods that result in the end of a person's life (Manurung & Simanjuntak, 2023).

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In the Old Criminal Code, the death penalty was regulated as a basic punishment in Article 10, while the method of execution was explained in Article 11, which stated that the punishment was carried out by hanging: the convict was tied to a rope attached to a gallows and then the board on which he stood was dropped. This method was later deemed inhumane. Therefore, in 1964, Law No. 2/Pnps/1964 was issued, which regulated the procedures for carrying out the death penalty in the general and military courts in a more orderly manner.

Although the death penalty is gradually being phased out as the highest punishment, its application is not as widespread as it once was. The regulation of the death penalty as a "primary punishment" in Article 10 of the Criminal Code actually makes it more difficult to enforce the law. This shows that, in terms of regulations, Indonesia still recognizes the existence of the death penalty, which occupies an important position in the criminal justice system. In fact, there are still many types of offenses that carry the death penalty, both those listed in other laws and in the Old Criminal Code, although there are also those that are outside the scope of the old Indonesian Criminal Code (Putri, Rahmatiar, & Abas, 2023).

Unlike the old Indonesian Criminal Code, in the new Indonesian Criminal Code (KUHP 2023), the death penalty is a special punishment that is always imposed as an alternative as a last resort in imposing criminal sanctions, as included in Article 98 of Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP 2023). The provisions of this law state that judges impose the death penalty with a 10-year probation period. During this probation period, if the defendant wishes to reform and demonstrates commendable behavior, the death penalty that has been imposed can be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court. The death penalty regulated in Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP 2023) is stated in Article 98 of the law, which states that the death penalty or capital punishment is imposed as a last resort to prevent criminal acts and (to) protect society. The implementation of the death penalty is regulated in Article 99 of Law Number 1 of 2023. The following is the text of the article, which consists of four paragraphs: 1) The death penalty may be carried out after the President has rejected the convict's request for clemency. 2) The death penalty as referred to in paragraph (1) shall not be carried out in public. 3) The death penalty shall be carried out by shooting the convicted person to death by a firing squad or by other means specified in the Law. 4) The execution of the death penalty against pregnant women, women who are breastfeeding their babies, or people with mental illness shall be postponed until the woman has given birth, the woman is no longer breastfeeding her baby, or the person with mental illness has recovered.

The application of the death penalty is a special punishment and is subject to change. This means that if a convicted person behaves well, their sentence can be reduced to life imprisonment or twenty years in prison. So the death penalty is not a main punishment, but a special punishment. During their time serving their sentences in correctional institutions and state detention centers, prisoners are given guidance on independence (mental-spiritual) and skills training. Good behavior while being a Correctional Facility Resident (WBP) can be used as a reference in granting sentence reductions or applying for parole. From the perspective of international law and human rights, the death penalty is contrary to international human rights provisions, particularly Article 3 of the UDHR, namely the right to life. However, there is an exception to this article, namely Article 4 paragraph (1) of the ICCPR derogable right, which essentially states that the death penalty may be carried out if the crime in question endangers the public.

The death penalty is imposed as a last resort. The procedure for carrying out the death penalty in the new Indonesian Criminal Code is regulated in Articles 100 and 101. The following is the text: (1) The judge shall impose the death penalty with a probation period of 10 (ten) years by considering: a. the defendant's remorse and hope for rehabilitation; or b. the defendant's role in the crime. c. there are mitigating circumstances. (2) The death penalty with a probation period as referred to in paragraph (1) must be stated in the court's decision. (3) The 10 (ten) year probation period shall commence 1 (one) day after the court's decision becomes final and binding. (4) If during the probation period as referred to in paragraph (1) the convict demonstrates commendable attitude and behavior, the death penalty may be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court. (5) If during the probation period as referred to in paragraph (1) the convicted person does not demonstrate commendable behavior and there is no hope for improvement, the death penalty may be carried out on the orders of the Attorney General.

If the death row inmate's petition for clemency is rejected and the death penalty is not carried out within 10 (ten) years of the clemency being rejected, not because the inmate has escaped, the death penalty may be commuted to life imprisonment by Presidential Decree, which provides clarity for the inmate. The Explanation of Law Number 1 of 2023 concerning the new Indonesian Criminal Code states that the death penalty is not included in the basic criminal system. The following is the explanation of Article 98 of Law Number 1 of 2023 concerning the death penalty as an alternative measure of last resort to prevent criminal acts.

Explanation of Article 98 of Law Number 1 of 2023 The death penalty is not included in the basic criminal system. The death penalty is specified in a separate article to indicate that this type of punishment is truly special as a last resort to protect society. The death penalty is the most severe punishment and must always be imposed as an alternative to life imprisonment or a maximum of 20 (twenty) years' imprisonment. The death penalty is imposed with a probationary period, so that during this probationary period, the convicted person is expected to reform themselves so that the death penalty does not need to be carried out and can be replaced with life imprisonment. In the future, there will be several important changes related to the death penalty,

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especially the amendments made to the new Indonesian Criminal Code which was passed on December 6, 2022, whereby judges impose the death penalty with a probation period of 10 years. This is stated in Article 100 of Law Number 1 of 2023 concerning the new Indonesian Criminal Code. Article 100 Paragraph 1 of the new Indonesian Criminal Code stipulates that judges impose the death penalty with a probation period of 10 years by taking into account the defendant's remorse and hope for self-improvement or the defendant's role in the crime. However, Article 100 Paragraph 2 explains that the death penalty with a probation period as referred to in Paragraph 1 must be stated in the court's decision. Then, if the defendant shows commendable attitude and behavior during the probation period, the death penalty can be changed to life imprisonment. This is done through a Presidential Decree (Keppres) after obtaining the consideration of the Supreme Court (MA). "Life imprisonment as referred to in Paragraph 4 is calculated from the date the Presidential Decree is issued," reads Article 100 Paragraph 5 of the new Indonesian Criminal Code. "If during the probation period as referred to in Paragraph 1, the convict does not show commendable attitude and behavior and there is no hope for improvement, the death penalty may be carried out on the orders of the Attorney General," (Article 100 Paragraph 6 of the new Indonesian Criminal Code).

The general purpose of criminal law is to maintain and protect society as a whole, especially the Indonesian people. In addition, the foundation of the Indonesian state, the 1945 Constitution, outlines the reasons for criminal regulations in the context of protecting and ensuring the welfare of the people (Ferawati, 2015). The position of the death penalty in the 2023 Criminal Code reinforces the aspect of human rights in Indonesian criminal law. In legal principles, there are interrelated rights and obligations, meaning that from a legal perspective, the rights and obligations of individuals as a subsystem in society will always be associated with the rights and obligations of individuals in other societies. Therefore, the government regulates relationships between individuals and society based on these two aspects, namely human rights and community rights. The most fundamental rights are the right to life and the right to live one's life. The values of human rights in Indonesian criminal law can be examined or identified as follows: a) Through the guidelines for understanding and practicing Pancasila (Ekaprasetya Pancakarsa), which affirm that the nobility and dignity of human beings is something that must be believed to be true based on Pancasila, so that human beings are placed in accordance with the nature of God Almighty as personal and social beings; b) The preamble to the 1945 Constitution, paragraph 4 of which states that the purpose of the Indonesian state is to protect the entire Indonesian nation and all Indonesian blood; c) Everyone has the right to life, liberty, and security based on Article 3 of the Universal Declaration of Human Rights, which guarantees these rights; d) The prohibition of arbitrary deprivation of a person's right to life is based on Article 6, paragraph 1 of the International Covenant on Civil and Political Rights; e) Murder is an act that is condemned by almost all national systems in every country, even though there is tolerance for murder by the United Nations government through the 6th Congress and confirmed in Resolution 11 of the 7th Congress in 1985 in Milan. Based on this, the death penalty should be avoided as far as possible in order to uphold human dignity and noble and fundamental human values.

In addition to emphasizing human rights, the position of the death penalty in the 2023 Criminal Code also reinforces the monodualistic principle in Indonesian criminal law. The Indonesian people have Pancasila as their philosophy of life, and the values contained in Pancasila are actually social values that already existed in Indonesian society before the nation's independence. Lawrence Friedman says that legal culture is formed from national values, meaning that the ideas, opinions, norms, and values about law in society are the determining variables in shaping a law (Friedman, 2009). Indonesian society is inherently religious, familial, monodualistic, and collective in nature. The monodualistic view accommodates values or ideas oriented toward balancing the public interest or protection of society while also considering individual interests or protection. In line with the principle of monodualistic balance, the objectives of punishment in the national Criminal Code are, first, the aspect of protection of the interests of society (public interest/social defense), which specifically includes preventive measures or crime prevention, security measures (protection) for the community, and efforts to restore balance in the community in conflict resolution (conflict oppressing) in order to bring about peace (vredemaking). The second aspect is the Protection (Guidance) of Individuals (Social Welfare), which includes the reintegration of convicts into society (resocialization/rehabilitation), meaning efforts to free them from guilt, whereby punishment is not intended to cause suffering and demean human dignity (protection against arbitrary/retaliatory sanctions) (Maerani, 2015). The idea of monodualistic balance according to Barda Nawawi Arief should be present in the following forms (Nurahman & Soponyono, 2019) : a) There is a balance between the interests of the public/community and the interests of the individual; b) There is a balance between protection or interests from the perspective of the offender (the idea of individualization of punishment) and from the perspective of the victim in a fair manner; c) The existence of a balance between objective factors (actions/physical) and subjective factors (people/inner/inner attitudes); d) a balance between "formal" and "material" criteria e) A balance between "legal certainty," "flexibility," and "justice" f) a balance between nationally agreed values and globally/internationally/universally agreed values. In carrying out the death penalty, in addition to efforts to protect society, individual rights are also taken into consideration, such as the possibility of postponing the execution of the death penalty, known as "conditional death penalty" with a probation period of 10 years. This monodualistic approach is commonly referred to as *daad-dader strafrecht*, which is criminal law that not only looks at the objective aspects of the act but also looks at the subjective aspects of the person/perpetrator (Nawawi Arief, 2016).

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### ***B. Impact of the Death Penalty in Law Number 1 of 2023 on the new Indonesian Criminal Code (KUHP 2023)***

The purpose of severe punishment or the death penalty is to protect the public interest in society that is endangered by criminals who can no longer be reformed. However, the consequences of severe imprisonment often result in the loss of a person's identity and lifelong suffering, often leading them to seek a better way out, such as by escaping, while the death penalty is certainly not a light punishment (Poernomo, 1982).

In relation to the objectives of modern criminal law, which in this school of thought contains aspects of science that are not only normative in nature, and in relation to the principles set forth in the Pancasila, the necessity of the death penalty must be weighed against its "benefits" to the public interest and society first, and only then to the interests of the individual, where the fulfillment of both interests is not easy when both interests require guarantees at the same time. If, according to the specific circumstances of the case and based on the interests involved, it would be more beneficial for the interests of the individual than for the public or society to not impose the death penalty, then it may be decided to impose another type of punishment.

The issue of the death penalty arises when there are two schools of thought regarding the policy on the death penalty in Indonesia. The first group wants to retain the death penalty (pro-death penalty), arguing that a punishment commensurate with the crime committed by the perpetrator, and the imposition of the death penalty, is expected to have a deterrent effect on perpetrators. Therefore, the death penalty is still relevant. The second group consists of those who want to abolish the death penalty (against the death penalty). Their basis is that the death penalty contradicts Article 28 paragraph 1 of the 1945 Constitution regarding the right to life. Those who are against the death penalty base their argument on the constitution, where the death penalty contradicts human rights as stipulated in Article 28 of the 1945 Constitution.

Basically, the imposition of the death penalty is contrary to international human rights law. International human rights law explicitly states that the death penalty is contrary to the principles set out in the International Covenant on Civil and Political Rights (ICCPR). This is as stated in Article 6 (1) of the ICCPR, which reads: everyone has the right to life and to legal protection, and no one can take that right away. However, the imposition of the death penalty is justified in cases of criminal acts that are classified as gross violations of human rights and deserve the death penalty, as stipulated in Article 6 of the International Covenant on Civil and Political Rights.

In the new National Criminal Code, this reform is found in the provisions on the death penalty, namely the death penalty as an alternative punishment and the postponement of executions. With the new regulations on the death penalty in Indonesia, specifically regarding the postponement of executions, it is hoped that this will be a middle ground between the pros and cons of the death penalty. The 10-year probation period for death row inmates in Law 1/2023 is a middle ground for the debate on the abolition of the death penalty (abolitionists) and the enforcement of the death penalty (retentionists). The application of a probation period in a death sentence or punishment reflects the values of Pancasila because it seeks to balance the interests of individuals and society. The postponement of the execution of the death penalty is stipulated in writing in Article 100 of the National Criminal Code. Article 100 paragraph (1) of the National Criminal Code states that the execution of the death penalty is determined by a 10 (ten) year postponement of the death penalty, taking into account two conditions, namely remorse and efforts to reform, and the role of the defendant in the crime. Furthermore, Article 100 paragraph (4) of the National Criminal Code states that if the convict behaves well, then by presidential decree upon the recommendation of the Supreme Court, the death penalty can be commuted to life imprisonment.

The impact of the implementation of the death penalty after the National Criminal Code can be described as follows. First, the implementation of the death penalty as an *ultimum remedium*. The regulation of the death penalty in National Criminal Code Number 1 of 2023 is no longer a primary punishment but a separate sanction in the form of a special punishment. In Article 98 of the National Criminal Code, special punishment is a punishment that is imposed alternatively, meaning that the death penalty is used as a last resort and is only imposed on individuals whose crimes are categorized as requiring the death penalty. This is in line with the concept of the death penalty as a last resort, namely that the use of the death penalty is viewed as the final measure to be taken in imposing punishment. In the case of punishment as an *ultimum remedium*, it can only be imposed if the act meets all the considerations of the judge in Article 54 of the national Criminal Code. The wording of Article 54 paragraph (1) states that in sentencing, consideration must be given to, among other things, the nature of the offense committed by the perpetrator, the motive and purpose of the perpetrator in committing the crime, the attitude and inner feelings of the perpetrator, whether the crime was premeditated or not planned in advance, taking into account how the perpetrator committed the crime; the attitude and actions of the perpetrator after committing the crime, the daily life history of the perpetrator, including their social and economic circumstances, the implications of the criminal act for the future of the perpetrator and the victim or the victim's family, and finally, forgiveness from the victim and/or the victim's family; and/or the values of law and justice that exist in society. According to Barda Nawawi Arief, the use of the death penalty as an *ultimum remedium* is seen as inappropriate for the purpose of punishment, as the main or core purpose of punishment is to regulate, enforce discipline, and reform both individuals and society. Furthermore, the retention of the death penalty, even though it is a special form of punishment, is based on the idea that its function is to protect the convicted person from demands or acts of revenge by the community that are outside the bounds of the

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law or extra-legal execution without proper legal procedures. This means that the provision of the death penalty in the law is intended to avoid public emotion (Arief, 2013).

Furthermore, the second impact of the application of the death penalty in the National Criminal Code is the death penalty as a special punishment. In the explanation of Article 67 of the National Criminal Code, the death penalty will be imposed for special crimes, namely very serious or extraordinary crimes, including special crimes related to narcotics; special crimes related to terrorism; special crimes related to corruption; and serious crimes against human rights. Another special feature in the use of the death penalty is that it is always imposed as an alternative. This is stated in Article 67 of the National Criminal Code and then in Article 98, which states that the death penalty is imposed as an alternative as a last resort to prevent criminal acts and protect society. According to the KBBI (Big Indonesian Dictionary), the word alternative means a choice between two or more possibilities, another word that is synonymous with this is choice or substitute. Based on these references, the position of the death penalty in the national Criminal Code will always be imposed in the form of a choice or substitute presented to the suspect.

## V. CONCLUSIONS

The death penalty is still regulated in Law Number 1 of 2023 concerning the new Indonesian Criminal Code (KUHP 2023). In the National Criminal Code, the death penalty is categorized as a special type of punishment that is imposed alternatively and is only used as a last resort in imposing criminal sanctions, as stipulated in Article 98 of Law Number 1 of 2023. One important innovation in this regulation is the application of a 10-year probation period for those sentenced to death. This means that judges can impose the death penalty with a probation period, giving convicts the opportunity to demonstrate a change in attitude and behavior during that period.

The impact of the regulation of the death penalty in this Law is that the death penalty is positioned as the *ultimum remedium* or the last resort taken only when there are no other lighter options. In addition, another impact of the application of the death penalty in the new Indonesian Criminal Code is that the death penalty is a special punishment, meaning that it will be imposed for specific crimes, namely very serious or extraordinary crimes, including specific crimes related to narcotics; specific crimes related to terrorism; specific crimes related to corruption; and serious crimes against human rights. Another special feature in the use of the death penalty is that the threat of it is always carried out alternatively. With this probation period, the convicted person is given the opportunity to reform themselves, while the state continues to optimally protect the interests of society.

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