

**Research Article**

**A Juridical Study of the Death Penalty for Premeditated Murder in the Perspective of Indonesian Criminal Law Reform**

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**ABSTRACT**

One of the most serious crimes is premeditated murder because it is carried out with deliberate planning and conscious thought of the loss of the victim's life. The definition and specifications of the planning aspect in premeditated murder are not regulated in the Criminal Code. The deterrent effect of the death penalty in premeditated murder must be considered by the judge very carefully, because the death penalty is *irreversible*. In addition, in terms of the implementation of the death penalty which still reaps protests from human rights activists. This paper aims to re-describe the relevance and urgency of the death penalty in terms of punishment for perpetrators of premeditated murder. The type of research used in this writing is a type of doctrinal research, using an analytical approach method to the norms behind the text of the legislation, both legally and philosophically. This study produces an analysis of the element of planning in the Criminal Code and the conclusion is that there are no clear details about the element of "planning" in Article 34 of the old Criminal Code or Article 459 of the new Criminal Code.

**Keywords: Deterrent Effect; Death Penalty; Premeditated Murder**

**A. INTRODUCTION**

Premeditated murder is a murder that uses the aspect of planning before the murder, this aspect is the aspect that makes premeditated murder a "heinous" crime that can be sentenced to death. A deeper examination sees that the perpetrator's inner character and guilt (*schuld*) should indeed increase the threat of premeditated murder more than ordinary murder. Everyone who commits premeditated murder is a serious criminal, their mental condition is different from an emotional murderer who does not plan. Murder is a crime that has many definitions or classifications, such as ordinary murder and

deliberate murder. The act of premeditated murder has a gap between the creation of the desire and its implementation. The crime of premeditated murder begins with a plan before the murder is carried out, such as the perpetrator calmly considering the actions to be carried out (Agustinus, Soponyono, & Rahayu, 2016).

The maximum penalty for premeditated murder is life imprisonment or the death penalty, depending on the type of punishment imposed (Yanri, 2017). It is quite difficult to apply the death penalty to premeditated murder cases because the definition and specifications of the planning aspect are not regulated in the new Criminal

Code or the old Criminal Code. This situation is very reasonable, as expressed by Mertokusumo, that the life of society is very broad, of course, all of it cannot be regulated by laws and regulations completely and clearly, so the law must be sought and found. The definition and requirements of the element of planning will always be dynamic, in accordance with the development and complexity of cases or cases of premeditated murder. Even in certain cases, determining the crime of murder or premeditated murder is not easy, because both have very thin differentiation or differences. Likewise, determining the existence of an element of planning in a crime of premeditated murder is not an easy job (Mertokusumo, 2009).

Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code contains a new article on premeditated murder, namely Article 459 which states that "any person who with prior planning takes the life of another person, shall be punished for premeditated murder, with the death penalty or life imprisonment or a maximum imprisonment of 20 (twenty) years". Then based on Article 67 of the new Criminal Code, the death penalty is classified as a special punishment which is always threatened alternatively with a probationary imprisonment of 10 years. In addition, the death penalty is defined as a conditional alternative punishment with the conditions as referred to in Article 100 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, or the new Criminal Code, which can result in the release of

the death penalty for perpetrators of premeditated murder.

Based on the various explanations above, it is clear that the implementation of the death penalty for perpetrators of premeditated murder as regulated in Law Number 1 of 1946 (old Criminal Code) and Law Number 1 of 2023 concerning the Criminal Code (new Criminal Code) is not easy to implement, this is due to the fact that there are no regulations regarding the definition and limitations of the planning element in premeditated murder both in Law Number 1 of 1946 and Law Number 1 of 2023 concerning the Criminal Code. On the other hand, the existence of Article 100 of Law Number 1 of 2023 concerning the Criminal Code which makes the death penalty a conditional alternative punishment makes it difficult to impose on perpetrators of premeditated murder because there is a condition of probation for improving the morality of the perpetrator of premeditated murder which can be changed to life imprisonment if it shows remorse and a change in attitude from the perpetrator of premeditated murder.

Regarding the element of planning as the core difference between premeditated murder and ordinary murder, Andi Hamzah sees that the element of planning is sufficiently known that the perpetrator had thought about killing or not (Mohamad, Alamsyah, & Antoni, 2023), however, as a guarantee of legal certainty, it is necessary to regulate the meaning of the plan in the crime of premeditated murder in the provisions of Law

Number 1 of 2023 concerning the Criminal Code, considering that the element of planning is an aggravating element in the punishment of the crime of premeditated murder that is committed (Baidlowi, 2017).

The problem of the difficulty of implementing the death penalty as a legal consequence of Article 100 of Law Number 1 of 2023 concerning the Criminal Code which is caused by the subjective requirement of the morality of the perpetrator of premeditated murder occurs due to the aspect of respect for human rights in Law Number 1 of 2023 concerning the Criminal Code. This is indicated by the consideration of letter b of Law Number 1 of 2023 concerning the Criminal Code which states that:

“The national criminal law must be preserved with legal policies, conditions, and developments in social, national, and state life that aim to respect and uphold human rights, based on the Almighty God, just and civilized humanity, the unity of Indonesia, democracy guided by the wisdom of deliberation/representation, and social justice for all Indonesian people”.

These provisions indicate the neglect of the method of eradicating serious crimes that have an impact on extraordinary damage that requires maximum punishment with aggravation. The aspect of basic human rights can be understood that the right to life is the main right guaranteed by human rights, premeditated murder is a murder that injures human values and human life, so premeditated murder is a serious crime that should be subject to maximum punishment with

aggravation. The determination of a special maximum will be related to the material aspect or symbolic aspect, namely to show the level of seriousness of a crime. This means that the determination of the maximum penalty provides an objective limit or measure regarding the quality of actions that are "disliked" or considered detrimental or dangerous to society (Syahrin, Anggusti, & Alsa, 2023).

Various existing narratives show that in the formulation of criminal law provisions on the aspects of acts and punishment in the framework of the issue of implementing the death penalty for premeditated murder, there are two regulatory issues, namely the clarity of the attempted element as one of the elements of the act in the crime of premeditated murder, there is also a regulatory issue in the form of the mechanism for imposing the death penalty as an alternative conditional sentence that only focuses on efforts to forgive the perpetrators of the crime based on the morality of the perpetrators, but ignores the aspect of the nature of the crime of premeditated murder as a serious crime against humanity and damages human rights in the form of the right to life (Wibowo & Rochaeti, 2015). These two views on the obstacles to implementing the death penalty for perpetrators of premeditated murder as a serious crime against humanity show that the development of criminal law does not only look at respect for human rights for the perpetrators, but must also proportionally view the human rights of victims of premeditated murder whose lives have

been taken in a planned manner through a series of cruel murders (Lu & Zhang, 2005).

So that the aspect of planning in premeditated murder is still relevant as a reason for imposing maximum punishment with aggravation against the perpetrator of the crime of premeditated murder, in other words, the renewal of the formulation of the death penalty for the crime of premeditated murder in Indonesian law is very relevant and important, considering that the death penalty is still needed as a means of preventing violations of human rights due to premeditated murder, however, the formulation of the death penalty for the crime of premeditated murder in Indonesian law must be oriented towards the socio-juridical and philosophical values of the Indonesian nation which are crystallized in Pancasila which mandates the renewal of criminal law based on the identity of the Indonesian nation as a nation that believes in God, upholds the principles of mutual cooperation, respect for public interests, and deliberation and consensus (Maulidah & Jaya, 2019).

Criminal law reform must be in accordance with national insight and the nation's ideology, namely Pancasila, then adjusted to international legal instruments. So that the criminal law that is aspired to is achieved and in accordance with the values adopted by society. Based on *ius constituendum* which aspires for Indonesian criminal law in the future to be a law that is in accordance with the values of the nation and also

the ideals of the nation outlined by the founders of the Indonesian nation, it is appropriate and proper to try to reform criminal law in Indonesia.

The research in this paper aims to determine the formulation of the death penalty for the crime of premeditated murder as referred to in Law Number 1 of 2023 concerning the Criminal Code. After the fact of the formulation of the death penalty for perpetrators of the crime of premeditated murder as referred to in Law Number 1 of 2023 concerning the Criminal Code was discovered, a study of criminal law reform was then carried out on the issue of the difficulty of the operationalization of the death penalty in the crime of premeditated murder. B. Arief Sidharta is of the opinion that in order for the imposition of criminal penalties (especially the death penalty) by the state to be accountable for at least 3 (three) aspects, namely the actions committed by the convict are bad and oppress human dignity and endanger human existence, criminal sanctions must be a warning for people to stay away from actions that are considered bad, the imposition of criminal penalties must be directed to encourage convicts to actualize their human values. Thus, according to him, the death penalty only fulfills the first and second aspects of the three aspects that must be fulfilled so that the imposition of criminal penalties can be accounted for by the state .

Research related to the death penalty for premeditated murder is needed, considering that criminal law is a means of protecting the right to

live safely, peacefully, and securely as a human right (Dewi, 2020). The ambiguity of the legal aspects both in the matter of the material planning element in premeditated murder, as well as the implementation of the death penalty as a conditional alternative punishment that ignores the position of premeditated murder as a serious crime against humanity because it has violated the right to life and protection of life, requires a solution to reform the criminal law policy which on the one hand is able to protect the respect for the human rights of victims of crime and on the one hand is able to create a deterrent effect for perpetrators of premeditated murder without ignoring the perpetrator's human rights as well. So that the regulation of the death penalty for premeditated murder can run proportionally or fairly (Khairawati, 2014).

The research related to the relevance of the death penalty to the crime of premeditated murder was previously conducted by Widhy Andrian Pratama, Widhy in his research examined the enforcement of the death penalty against premeditated murder from the perspective of human rights studies. Widhy in his research argued that the enforcement of the death penalty must be applied to premeditated murder because the application of the death penalty does not conflict with human rights which have been widely questioned so far, according to him the concept of human rights is not limited to respecting the perpetrator's human rights alone, but as humans who are obliged to also respect the human rights

of others, the actions of the perpetrator of the crime of premeditated murder have injured the human rights of the victim, so that for his actions, the death penalty can be imposed as a form of accountability for the perpetrator of premeditated murder as well as a warning to everyone about the importance of respecting and protecting the human rights of every human being including victims of premeditated murder (Pratama, 2019).

The next research is a research conducted by Krisnadi Breml, Krisnadi in his research examines the issue of criminal law policy regarding the death penalty for perpetrators of premeditated murder as regulated in Article 340 of Law Number 1 of 1946 concerning the Criminal Code", in his research Krisnadi stated that the National criminal law policy still views the death penalty for perpetrators of premeditated murder as relevant considering that the perpetrators of the crime of premeditated murder have injured the victim's right to life (Breml, 2019).

Similar research has been conducted, but only focused on describing the renewal of the death penalty in the draft of the 2020 Criminal Code (Putra & Sutanti 2020). Then research on the death penalty from a human rights perspective was conducted in 2021 which resulted in the opinion that execution and the death penalty can be imposed on perpetrators of crimes that violate the limits of humanity and threaten the lives of many people (Wahyuni, 2021).

A clear definition and limitation of the elements of premeditated murder are essential for several reasons, including legal clarity, appropriate punishment, and ensuring justice (Ploeg et al., 2024). Research on the death penalty for premeditated murder has also been conducted by approaching the influence of English law on Islamic law in Pakistan (Khan & Iqbal, 2019).

The research in this paper discusses the issue of operational obstacles to the death penalty for perpetrators of premeditated murder which are not discussed in several studies above. Two regulatory issues in the formulation of criminal law provisions in the aspects of acts and punishment related to the framework of the issue of implementing the death penalty for premeditated murder in the form of clarity of the attempted element as one of the elements of the act in the crime of premeditated murder, there is also a regulatory issue in the form of a mechanism for imposing the death penalty as an alternative conditional sentence that only focuses on efforts to forgive perpetrators of crimes based on the morality of the perpetrators of the crime, but ignores the aspect of the nature of the crime of premeditated murder as a serious crime against humanity and damages human rights in the form of the right to life, has resulted in the death penalty for perpetrators of premeditated murder in the field of implementing criminal law regulations (*ius operatum*) can be said to be not yet relevant to the expectations of the objectives

of criminal law as a means of protecting society and the humanitarian values expected by Pancasila (Barlian & Arief, 2017).

Various existing ideas show that the research in this paper seeks to find solutions to the two legal obstacles to imposing the death penalty for perpetrators of premeditated murder as a serious crime related to life in proportion to the analysis of the current criminal law policy as positive law (*ius constitutum*) in order to find a model of the death penalty policy for perpetrators of premeditated murder in the future (*ius constituendum*) (Alin, 2017).

Based on the issues that have been described, this article feels the need to study more deeply the regulation of the death penalty for premeditated murder, especially in the upcoming criminal law reform. This research was conducted so that Indonesian criminal law in the future will pay more attention to all aspects of the good and bad of the death penalty and formulate it very wisely regarding the death penalty as a means of protecting the rights of victims of premeditated murder who are injured by the actions of the perpetrator of the crime of premeditated murder. The purpose of this research is to study and understand how the death penalty should be for premeditated murder based on respect and protection of the rights of victims in Indonesian criminal law.

## **B. RESEARCH METHODS**

The type of research used in this study is a type of doctrinal research, where the research conducted is research related to the analysis of the norms behind the text of laws and regulations, both legally and philosophically (Barus, 2013). This article uses a goal-oriented policy approach, a rational approach and a value-oriented approach. In this study, the data collection technique uses a literature study method by referring to primary legal materials in the form of laws and regulations, books and research results (scientific works). The criminal law policy that is the starting point for this research is Article 340 of Law Number 1 of 1946 concerning the Criminal Code, Articles 459 to Article 469 of Law Number 1 of 2023 concerning the Criminal Code, and Article 100 of Law Number 1 of 2023 concerning the Criminal Code.

## **C. RESULTS AND DISCUSSION**

### **1. Death Penalty for Premeditated Murder in Indonesia Today**

#### **a) The Relevance of the Death Penalty in Indonesia Today**

The death penalty is a sanction in criminal law that functions as a punishment and a deterrent to crime. The death penalty is expected to be used to suppress criminal activity in the social environment of society. According to the modern school, which views criminal law as primarily focused on protecting society from losses due to illegal activities and not simply

regulating the types of crimes and their punishments, this punishment is justified by the purpose of punishment. This idea shows that the purpose of criminal law is not only oriented towards the act and its perpetrators, but also prevention or proactive action to ensure that illegal activities are not carried out (Duff, 2010).

This is in line with the purpose of punishment as a practical way to stop the occurrence of major losses due to serious crimes. The death penalty, according to Ted Honderrich, is an appropriate punishment for a number of terrible crimes. Because, when compared to other criminal sanctions, the death penalty, which is the most severe punishment, can provide a very effective deterrent effect. Therefore, this can be an additional option to eliminate the complex and widespread criminal activities that occur in Indonesia. This reality stems from the fact that imprisonment has not been able to provide a deterrent effect on serious crimes in this country, so that the death penalty is a more feared punishment (Manski & Pepper, 2013).

Those who support the death penalty are retentionists, despite the fact that certain criminologists and human rights groups disagree with the death penalty, there are various schools of human rights teachings that have supported the death penalty since the beginning (Hatta, 2012). Retentionist organizations advocate the death penalty for those who commit major crimes; they put forward reasons in favor of the death penalty. Criminologists such as Jonkers,

Lombroso, and Gorofalo advocate the death penalty, this recommendation is also agreed upon by retentionists. Given that in court the death penalty can be overturned even in cases where the judge makes a mistake and the death penalty is imposed (Hutapea, 2016).

Lombroso and Gorofalo then argued that the death penalty is an absolute tool that must exist in society to eliminate individuals who cannot be fixed and have committed extraordinary crimes or *extra ordinary crimes* (Hutapea, 2016). Based on the above view, it is clear that the death penalty is a means needed to prevent the occurrence of *extra ordinary crimes* and their extraordinary damaging impacts.

In addition, criminal sanctions must be able to stem and prevent greater negative impacts due to crime. The explanation above makes it clear that the new provisions of the Criminal Code on the death penalty essentially recognize that the death penalty is still needed to prevent extraordinary crimes and their deadly consequences in the life of the nation and state. Even so, the imposition of the death penalty must also pay attention to the recognition and protection of humanitarian values (Toule, 2016).

The logical reason that sees the death penalty as one of the criminal penalties that is still effective in providing a deterrent effect and eliminating serious crimes, makes Indonesia one of the countries that still upholds the implementation of the death penalty. Constitutional Court Decision Number 2-3 / PUU-

V / 2007 is sufficient proof of this. The lawsuit mainly targets the constitutional review of the death penalty provisions in Law Number 22 of 1997 concerning narcotics, as stated in Constitutional Court Decision Number 2-3 / PUU-V / 2007. Specifically, in the consideration section, the Panel of Judges of the Constitutional Court is of the opinion that the right to life that cannot be reduced under any circumstances in Article 28i of the 1945 Constitution is a right that is actually limited by Article 28J paragraph (2) of the 1945 Constitution where the implementation of human rights must be subject to restrictions in law (Anugrah, Desril, & Disemadi, 2020). In these considerations, it is also explained that *the original intent* of Article 28J is to limit human rights based on fair laws (Arief, 2019).

Decision Number 2-3/PUU-V/2007 is a decision that tests the constitutionality of the death penalty in the Indonesian legal system contained in Law Number 22 of 1997 concerning Narcotics. Although only one law was tested, this decision had a major impact on the constitutionality of the death penalty contained in various other laws. including the Criminal Code (Criminal Code). Constitutional Court Decision Number 2-3/PUU-V/2007 is a decision that changes the perspective of the death penalty in national criminal law politics which is more imbued with the aspect of efforts to prevent social damage due to the impact of an extraordinary crime (Deni & Rahim, 2022). So it can also be concluded that the perspective on the validity of



the death penalty in Constitutional Court Decision Number 2-3/PUU-V/2007 uses the aspect of respecting and protecting the right to life as a human right owned by every person in Indonesia. This can be seen in Article 28J of the 1945 Constitution of the Republic of Indonesia (Deni & Rahim, 2022). Based on the existing narrative, it is clear that the Constitutional Court Decision Number 2-3/PUU-V/2007 intends to change the paradigm of the death penalty which is in the middle ground, namely the death penalty which is still maintained as a means of realizing a deterrent effect in extraordinary crimes, but according to the Constitutional Court Decision Number 2-3/PUU-V/2007, even though it is still needed as a means of preventing damage from extraordinary crimes, the death penalty in its implementation must still be based on the principle of respecting and protecting human rights through the principle of caution in implementing the death penalty. This is referred to as an effort to moderate the death penalty (Deni & Rahim, 2022).

The death penalty moderation policy is an attempt at a middle way to integrate various legal systems that influence the Indonesian legal system. Second, the death penalty moderation policy contained in the RKUHP which is currently being discussed in the DPR, some of which have accommodated the mandate of Decision Number 2-3/PUUV/2007, such as determining the death penalty outside the main sentence, postponing the death penalty, the possibility of changing the

death penalty to life imprisonment or a maximum of 20 years in prison. This moderation policy still raises problems related to the institution that provides the change of the death penalty, the issue of clemency, and the length of the postponement of the implementation of the death penalty. However, in the RKUHP there is no clear agreement regarding what crimes have certain indicators so that the death penalty can be imposed. This is not in accordance with the recommendation of Decision Number 2-3/PUU-V/2007 which states that the death penalty only applies to the most serious crimes (Deni & Rahim, 2022).

*The Indonesian Human Rights Watch then argued that there were three main reasons why the death penalty was often used by the courts, including (Waluyadi, 2009):*

- 1) The results of the application of the death penalty threat were used by the Dutch colonial regime, then in practice continued to be used until the authoritarian regime of the New Order to provide fear and even eliminate political opponents. This can be seen in the application of political crimes Article 104 of the Criminal Code;
- 2) Efforts to issue several new legal provisions that include the threat of the death penalty as a political compensation measure due to the inability to fix the corrupt legal system. Whereas the threat of the death penalty has never been able to prove its effectiveness in reducing crime rates including narcotics;

3) The increase in crime rates is seen solely as the responsibility of individual perpetrators.

The relevance of the death penalty in the national legal system is also supported by the history of the implementation of the death penalty during the Majapahit Kingdom. The death penalty during the Majapahit Kingdom (13th to 16th centuries) was included in the category of principal punishments in addition to amputation, fines, and compensation (Hamzah & Sumangilepu, 1985).

#### **b) Death Penalty for Premeditated Murder in Indonesia Today**

The death penalty for premeditated murder in Law Number 1 of 1946 concerning the Criminal Code is regulated in Article 340 of the Criminal Code. Article 340 concerning premeditated murder is intentionally and with prior planning to take the life of another person. According to R. Soesilo, "premeditated" (*voorbedaacthe rade*) means that between the emergence of the intention to kill and its implementation there is still time for the perpetrator to calmly think about it, for example how the murder will be carried out. This time should not be too narrow but on the other hand not too long (Soesilo, 1996).

The death penalty for premeditated murder in Law Number 1 of 2023 concerning the Criminal Code is regulated in Articles 459 to 469 of Law Number 1 of 2023 concerning the Criminal Code. According to Article 495 as referred to in Law Number 1 of 2023, the elements of premeditated murder consist of the perpetrator deciding to kill in

a calm state, not in a hurry, and not in an emotional state, sufficient time from the emergence of the will to its implementation, the perpetrator in carrying out his actions in a calm state (Nova S & Taufiqurrahman, 2024).

Both have similar elements related to the crime of premeditated murder, namely (Nova S & Taufiqurrahman, 2024):

- 1) The perpetrator of premeditated murder is human.
- 2) The perpetrator has the will and awareness to cause certain consequences that have been regulated in the legislation.
- 3) There is a time gap between planning and action that allows for systematic planning before taking action.
- 4) The perpetrator's actions resulted in the death of another person.

Based on the explanation above, it is clear that the crime of premeditated murder is a serious crime against life because the element of planning is an element where the perpetrator with awareness and mature consideration truly has the intention and action to eliminate a person's right to life as a human right that is respected and protected in this country, the position of premeditated murder as *the most serious crime* that has an impact on the damage to a person's right to life (Putri, 2019), can be the basis for imposing the death penalty as the maximum penalty with aggravation as intended by the Constitutional Court Decision Number 2-3 / PUU-V / 2007.

The position of the crime of premeditated murder as *the most serious crime* that has an impact on the damage to a person's right to life so that the death penalty can be imposed as the maximum penalty with aggravation as intended by the Constitutional Court Decision Number 2-3/PUU-V/2007, in reality, from a legal perspective, this cannot be easily carried out.

According to the normative study conducted by the author, this is because there is no normative explanation regarding the element of planning. Both in the explanation of Article 340 of Law Number 1 of 1946 concerning the Criminal Code and Article 459 of Law Number 1 of 2023 concerning the Criminal Code, there is no explanation of the element of planning in premeditated murder. Both in the explanation of Article 340 of Law Number 1 of 1946 concerning the Criminal Code and Article 459 of Law Number 1 of 2023 concerning the Criminal Code are only written quite clearly. Such a situation clearly results in the absence of normative measures and normative basis for judges to truly be able to make the element of planning an aggravating element in the crime of premeditated murder. This situation can also be referred to as *rechtsvacuum* or legal vacuum, so that the position of the crime of premeditated murder as a very serious crime for the safety of human life becomes unclear so that the death penalty can be imposed (Soponyono, 2012). The second issue is the issue of the position of the change in the death penalty as an alternative conditional sentence. Article 100

of Law Number 1 of 2023 concerning the Criminal Code states that:

- a. The judge sentenced him to death with a probationary period of 10 (ten) years, taking into account:
- b. the defendant's sense of regret and hope for self-improvement; or
- c. the role of the accused in the crime.
- d. The death penalty with a probationary period as referred to in paragraph (l) must be stated in the court decision.
- e. The 10 (ten) year probationary period begins 1 (one) day after the court decision has permanent legal force.
- f. If the convict during the probation period as referred to in paragraph (1) shows commendable attitudes and actions, the death penalty can be changed to life imprisonment by Presidential Decree after obtaining consideration from the Supreme Court.
- g. The life imprisonment sentence as referred to in paragraph (4) is calculated from the date the Presidential Decree is issued.
- h. If the convict during the probation period as referred to in paragraph (1) does not demonstrate commendable attitudes and actions and there is no hope of improvement, the death penalty can be carried out on the orders of the Attorney General.

The aspect of postponing the death penalty for 10 years as an experiment in seeing the moral attitude of the perpetrator to regret his actions and improve his morality, is another trigger for the death penalty for perpetrators of premeditated murder to be able to escape the death penalty, this is increasingly visible with the provisions of Article 100 paragraph (4) of Law Number 1 of 2023 concerning the Criminal Code which can release perpetrators of premeditated murder from the death penalty because the death penalty can be changed to life imprisonment with the

improvement of the morality of the perpetrator of premeditated murder. This clearly does not consider the victim who has lost his right to life as a human right that should be respected and protected in this country. This situation also shows that premeditated murder is no longer seen as a crime against life that is very serious and requires maximum punishment with aggravation in order to restore the damage in the form of the loss of a person's life as a serious human rights violation, in other words Article 100 does not view the crime of premeditated murder as *the most serious crime* that requires the death penalty in order to create a deterrent effect for the perpetrator and guarantee protection for the victim as a society that has the right to be protected for his right to life. So it is clear that Article 100 of Law Number 1 of 2023 concerning the Criminal Code also contradicts the Constitutional Court Decision Number 2-3/PUU-V/2007.

## **2. The Relevance of the Death Penalty in Realizing a Deterrent Effect in Cases of Premeditated Murder**

The death penalty is designed as the worst punishment with the aim of effectively preventing criminal activity. Maintaining the unity of Indonesia, justice, and protection of society are other reasons why the death penalty is still mandatory nationally, however in its implementation the death penalty also needs to be carried out carefully as an effort to respect

human rights for perpetrators of criminal acts (Muladi, 1997).

It can be seen from the development of the new Criminal Code Concept, the changes to the Criminal Code were designed not only by considering current global problems and movements, but also by objectively examining the actual social conditions in society. This reality is clearly seen in the way the death penalty is applied; based on the new Criminal Code, the death penalty is now classified as an extraordinary crime and not as part of the ordinary criminal category. Article 100 paragraph (1) of Law of the Republic of Indonesia Number 1 of 2023 concerning the new Criminal Code states that in imposing the death penalty with a probationary period of 10 years, it is mandatory to pay attention to the defendant's regret and there is hope to improve themselves or the defendant's role in the crime (Anugrah & Desril 2021).

Changes in the essence of the death penalty in Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code can create loopholes for perpetrators of serious crimes to escape the death penalty. This has clearly deviated from the operational reasons for the death penalty, which are none other than to prevent extraordinary crimes with their great damaging impacts. These legal loopholes can also occur in premeditated murder, the perpetrator of premeditated murder has resulted in the loss of another person's life that cannot be replaced with anything, life is a basic human right,

because the most fundamental human right in human history is the right to life and freedom from threats that can eliminate life and human welfare. So it is clear that premeditated murder is a serious problem in the world of criminal law. Premeditated murder has changed in the new Criminal Code, premeditated murder is no longer regulated in Article 340, but in Article 459 of the Republic of Indonesia Law Number 1 of 2023 concerning the Criminal Code or the new Criminal Code which reads " *Any person who with prior planning takes the life of another person, shall be punished for premeditated murder, with the death penalty or life imprisonment or a maximum imprisonment of 20 (twenty) years* ". This change clearly provides a loophole for perpetrators of premeditated murder to be punished with life imprisonment or 20 years imprisonment, considering that the death penalty is threatened optionally with an alternative prison sentence. Based on the various explanations available, it can be seen that the difficulty in imposing the death penalty for premeditated murder is due to:

**Table 1. Obstacles to Imposing the Death Penalty for Premeditated Murder According to the Provisions of the Old and New Criminal Codes**

<b>Weaknesses of the Death Penalty Regulation</b>	<b>Law Number 1 of 1946 concerning the Criminal Code</b>	<b>Law Number 1 of 2023 concerning the Criminal Code</b>
Arrangement of the meaning and limitations of planning	Article 340 of the Criminal Code does not regulate the explanation of	Article 459 of the Criminal Code does not regulate the explanation of

elements	the meaning and limitations of an attempt (Moeljatno, 2007)	the meaning and limitations of attempted crimes.
Execution of the death penalty	The death penalty as regulated in Article 10 of the Criminal Code is the main punishment that can be imposed without special conditions.	The death penalty as an alternative conditional punishment as regulated in Article 100 of the Criminal Code can be imposed with a 10-year probationary waiting period to see the moral improvement of the perpetrator of the crime. If the perpetrator can change himself because of his regret for the crime he committed, then the perpetrator's sentence can be changed to life imprisonment.

Source: Data processed by the author

The legal consequences of several weaknesses in the death penalty regulations for perpetrators of premeditated murder are:

- 1) There is no definite normative measure for judges to truly use the element of planning as a basis for imposing a heavier sentence for perpetrators of premeditated murder.
- 2) There is no respect for victims who have lost their right to life as a human right that should be respected and protected in this country.

This situation also shows that premeditated murder is no longer viewed as a very serious crime against life and requires maximum punishment with aggravation in order to restore the damage in the form of loss of life as a serious human rights violation, in other words Article 100 does not view the crime of premeditated murder as *the most serious crime* that requires the death penalty in order to create a deterrent effect for the perpetrators and guarantee protection for victims as members of society who have the right to be protected in their right to life. So it is clear that Article 100 of Law Number 1 of 2023 concerning the Criminal Code is also at odds with the Constitutional Court Decision Number 2-3 / PUU-V / 2007.

Several legal consequences arising from the legal issues of the regulation related to the death penalty for the crime of premeditated murder clearly violate the objectives of criminal law as regulated in Article 52 of Law Number 1 of 2023 concerning the Criminal Code which states that "criminalization is not intended to degrade human dignity". The legal consequences arising from the legal issues of the regulation related to the death penalty for the crime of premeditated

murder also contradict the objectives of criminal law according to Herbert L. Paker, according to Paker the objectives of criminal law are to resolve conflicts caused by criminal acts, restore balance, and bring a sense of peace to society (Irmawanti & Arief, 2021).

This is in line with the idea of balance in criminal law. The idea of balance in question includes (Nurahman & Soponyono, 2019):

- 1) Monodualistic balance between "public/community interests" and "individual or personal interests".
- 2) Balance between "formal" and "material" criteria.
- 3) The balance between "legal certainty", "flexibility or elasticity or flexibility", and "justice".

Regarding the idea of reforming criminal law that is oriented towards the idea of balance in criminal law, Barda Nawawi Arief stated that (Ismayawati, 2021):

"Criminal law reform is essentially an effort to reorient and reevaluate the socio-political, socio-philosophical, socio-cultural values that underlie and provide content for the normative and substantive contents of the desired criminal law... And, the national legal system, in addition to being able to support national development and the needs of international relations, must also be sourced from and not ignore the values and aspirations that live and develop in society, the values that live in society can be sourced or explored from customary law values or religious law values".

Efforts to realize the idea of criminal law development as explained above are realized by

adding criminal law thinking based on the idea of balance at the formulation stage to the implementation of a penal policy. The concept of the idea of balance in criminal law as intended by Barda Nawawi Arief consists of (Arief, 2011):

- 1) Monodualistic balance between public or general interests and individual or personal interests. In the idea of the balance of public or individual interests, it also includes the protection of the interests of victims and the idea of individualization of crime;
- 2) Balance between objective elements or factors or outer and subjective actions or people or inner thoughts or inner attitudes;
- 3) Balance between formal and material criteria;
- 4) The balance between legal certainty, legal flexibility or elasticity and legal justice.

The idea of renewing criminal law policy that is oriented towards the principle of balance in criminal law expects a balance in human rights through the formulation and operation of criminal law policy. The reason for the death penalty is maintained in the new Criminal Code as a special principal punishment. The change in the death penalty as a principal punishment that is regulated specifically and separately shows that, although national criminal law has paid much attention to the aspect of perpetrator development and left behind the classical criminal law paradigm that only relies on retaliation. Criminal law as retaliation is in line with Leo Polak's theory of retaliation which states that retaliation is used

to eliminate all things that cause acts that are contrary to the law (Satria, 2018).

Furthermore, the death penalty is maintained as an effort to protect the interests of society from the threat of *extra ordinary crime* which has great destructive power against the interests of the wider community, in addition, the change of the death penalty as a special principal punishment is basically an attempt at compromise in finding a way out between the "*retentionists*" and the "*abolitionists*". This means that the death penalty is an exceptional punishment. Judges must give serious and careful consideration before imposing the death penalty (Eddyono et al., 2015).

Based on the various opinions above, it can be observed that the death penalty can still be said to be relevant and important in national criminal law policy (Arief, 2005). Based on this explanation, it is clear that the criminal law policy mandates the implementation of the death penalty that respects human rights but can also be a medium in realizing a deterrent effect in order to prevent extraordinary damage due to criminal acts. Regarding the issue of the death penalty for premeditated murder based on the renewal of criminal law policy based on the teachings of the balance of criminal law, it can be realized in the following ways:

- 1) Standardize the explanation regarding the definition and limitations related to the classification of planning in premeditated murder which can be included in the

explanation of Article 459 of Law Number 1 of 2023 concerning the Criminal Code.

- 2) Creating a special unconditional mechanism in imposing the death penalty for premeditated murder as *the most serious crime* in Article 100 of Law Number 1 of 2023 concerning the Criminal Code.

#### D. CONCLUSION

The implementation of the death penalty for premeditated murder is hampered by the fact that there is no clear explanation regarding the planning element in Article 340 of Law Number 1 of 1946 concerning the Criminal Code or Article 459 of Law Number 1 of 2023 concerning the Criminal Code. The next obstacle is that the death penalty as a conditional alternative punishment as regulated in Article 100 of the Criminal Code can be imposed with a 10-year probationary waiting period to see the moral improvement of the perpetrator of the crime. If the perpetrator can change himself because of his regret for the crime he committed, then the perpetrator's sentence can be changed to life imprisonment.

The criminal law reforms that can be carried out regarding the issue of implementing the death penalty for premeditated murder include standardizing the explanation regarding the definition and limitations related to the classification of planning in premeditated murder which can be included in the explanation of Article 459 of Law Number 1 of 2023 concerning the Criminal Code, and creating a special

unconditional mechanism in imposing the death penalty for premeditated murder as *the most serious crime* in Article 100 of Law Number 1 of 2023 concerning the Criminal Code.

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