The Evolution of the Politics of the Death Penalty in Indonesia: A Paradigm Shift from Colonialism toward a Conditional Humanistic Middle Ground

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Abstract. *The death penalty remains a highly contested sanction within Indonesian and international criminal law. This article examines the transformation of capital punishment policy in Indonesia from the Dutch colonial period through the adoption of Law No. 1 of 2023 concerning the Criminal Code. Indonesia faces a continuing tension between its authority to protect society from extraordinary crimes and its obligations under international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR). Using a juridical-normative method combined with a synchronic-historical approach, this study traces changes in the legal and political orientation of capital punishment. The analysis indicates a movement from a predominantly repressive and retributive colonial model toward a framework that gives greater consideration to humanitarian and corrective objectives. The 2023 Criminal Code repositions the death penalty as a special punishment that is conditional and accompanied by a ten-year probationary period. This formulation provides a normative middle position between complete abolition and unrestricted retention. Nevertheless, its practical operation depends on clear standards, consistent judicial application, and institutional coordination so that subjective assessments and irreversible miscarriages of justice can be minimized.*

Keywords: *Legal Policy, Death Penalty, Criminal Code, Human Rights.*

1 Introduction

The death penalty has existed for centuries as one of the most severe responses available to a criminal justice system. Because its implementation permanently removes an individual's life, the sanction occupies a distinctive position in debates about human rights, criminal justice, and the limits of state authority. Recent

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international data show that executions remained a significant phenomenon in 2025, despite the continuing expansion of abolitionist policies in many jurisdictions [1]. This situation illustrates a continuing tension: while many states have moved toward abolition, several others continue to use capital punishment, particularly for offenses considered exceptionally serious.

At the global level, the status of capital punishment is increasingly divided between jurisdictions that have abolished it and those that retain it. By the end of 2023, 144 countries were identified as abolitionist either in law or in practice, while 55 remained retentionist. The debate therefore involves more than the technical question of whether a particular sanction should remain available. It also concerns the relationship between the state's duty to protect society, the authority to determine criminal policy, and the protection of human dignity.

Within this debate, two broad positions are commonly identified. Abolitionist arguments emphasize the inviolability of life and the possibility that an irreversible punishment may be imposed in error. Retentionist arguments, by contrast, maintain that capital punishment may remain available for exceptional offenses as an instrument of social protection and criminal deterrence. The continuing interaction between these positions means that capital punishment is simultaneously a legal, philosophical, and political issue.

Indonesia has retained capital punishment for a number of serious offenses, including certain forms of drug trafficking and terrorism. At the same time, Indonesia has ratified the ICCPR, an international instrument containing important guarantees concerning the right to life. The resulting tension became more nuanced with Law No. 1 of 2023 concerning the Criminal Code, which changes the legal position of the death penalty by placing it within the category of special punishment subject to conditions rather than treating it simply as an ordinary principal punishment [2].

The development of Indonesian criminal law demonstrates that the policy concerning capital punishment has never been completely static. Its formulation has changed along with political structures, constitutional developments, and changing understandings of human rights. From the colonial period through the Old Order and New Order and into the Reform Era, the death penalty has been associated with different objectives and legal rationales [3]. The adoption of the 2023 Criminal Code therefore needs to be understood as part of a longer process rather than as an isolated legislative event.

Despite the normative reform, practical questions remain. An execution cannot be reversed if a wrongful conviction is discovered, making the possibility of judicial error particularly serious. The deterrent effect of capital punishment has also remained a matter of empirical and scholarly debate [4]. These concerns place constitutional considerations, human rights, public protection, and the reliability of criminal adjudication within the same policy discussion.

This study addresses three principal issues: first, how capital punishment regulations developed throughout the history of Indonesian law; second, how international human rights instruments influenced the reform of national criminal law; and third, whether the conditional death penalty established under the 2023 Criminal Code can provide a meaningful normative middle position or primarily represents a political and legal compromise [5].

The theoretical foundation of this article combines Criminal Law Policy Theory with Integrative Theory of Punishment. Criminal law policy refers to the state's rational effort to formulate criminal law in accordance with social needs, legal values, and the objectives pursued by society [6]. In this perspective, criminal legislation should not be viewed merely as a collection of sanctions, but as a policy instrument that responds to social change while protecting public interests.

Integrative punishment theory understands criminal sanctions as serving more than one purpose. Retributive considerations may remain relevant, but they are combined with objectives such as deterrence, rehabilitation, education, and social protection. Punishment is consequently expected to maintain a balance between safeguarding society and respecting the humanity of offenders [7]. This framework is useful for assessing the repositioning of the death penalty in the 2023 Criminal Code and its treatment as an ultimum remedium, or measure of last resort.

Previous studies have largely concentrated on constitutional questions and religious or doctrinal perspectives. Research concerning Constitutional Court decisions has examined the relationship between capital punishment and the constitutional guarantee of life, while more recent scholarship has considered Article 100 of the new Criminal Code through approaches such as maqasid al-sharia [8]. Other research has investigated the relationship between the new rule and Indonesian social attitudes toward capital punishment.

However, much of the existing literature examines the death penalty in a partial manner, either through doctrinal analysis or through comparison of legal texts. There is comparatively less attention to a continuous historical analysis that connects colonial regulation with contemporary criminal law and examines how capital punishment has also functioned within broader political structures. The longer-term implications of prolonged death-row detention, sometimes described as the 'death row phenomenon', likewise create psychological and institutional concerns that deserve attention [9].

Another unresolved issue concerns institutional preparedness. The ten-year probationary mechanism requires authorities to evaluate the conduct of persons sentenced to death. This creates a need for objective and transparent standards, including clarity about the respective roles of the Supreme Court and the Attorney General's Office. Without such standards, differences in interpretation could produce inconsistent outcomes.

The present study therefore adopts a multidimensional approach. The evolution of capital punishment is examined through statutory and historical analysis, while also

considering international human rights standards, including the ICCPR and the Convention Against Torture, together with the realities of law enforcement in Indonesia [10]. The article treats the 2023 framework not simply as the endpoint of reform, but as a new stage whose practical consequences and institutional safeguards require further assessment.

Accordingly, this research aims to map the historical and political development of capital punishment in Indonesia, examine the interaction between domestic regulation and international human rights norms, and identify policy considerations relevant to the future development of Indonesian criminal law. The analysis focuses particularly on whether the conditional model under the new Criminal Code can operate consistently with the objectives of humanitarian criminal justice and constitutional protection.

2 Research Methods

This research uses a juridical-normative method with a synchronic-historical perspective. The approach is appropriate because the study examines legal norms, legislative changes, and criminal policy concerning the death penalty across different periods of Indonesian legal development. The research is descriptive and analytical: it first describes changes in capital punishment regulation and then interprets the policy orientation reflected in those changes [11].

Three approaches are applied. The statutory approach is used to examine legal instruments governing capital punishment, beginning with the Wetboek van Strafrecht and the former Criminal Code and continuing to Law No. 1 of 2023 and other special criminal legislation that retains the sanction. The historical approach traces the development of capital punishment against changing political, social, and ideological circumstances. The conceptual approach examines ideas such as criminal law policy, the right to life, the purposes of punishment, and the humanization of criminal law [11].

The study relies on secondary data collected through library research. Primary legal materials consist of statutes, judicial decisions, and international human rights instruments relevant to capital punishment in Indonesia. Secondary materials include scholarly journals, books, earlier research, expert views, and academic studies dealing with penal policy, human rights, abolitionism, retentionism, and criminal law reform. Tertiary materials, including legal dictionaries and encyclopedias, are used to clarify terminology and legal concepts.

Collection of materials was conducted through documentary study. The collected materials were subsequently examined through qualitative and normative analysis, using legal interpretation, systematic analysis, and deductive reasoning. The analysis was directed toward identifying changes in death penalty policy and understanding them through the theories of criminal law policy and integrative punishment. The study

also considers the relationship between this discussion and the growing role of restorative justice within Indonesian criminal law [12].

3 Results and Discussion

3.1 The Development of Death Penalty Regulations in the History of Indonesian Law

Capital punishment represents the most severe sanction recognized within a criminal justice system because its implementation permanently terminates the life of the convicted person. Its presence has consequently generated a long-standing debate between abolitionist perspectives, which emphasize the right to life, and retentionist perspectives, which regard the sanction as permissible for exceptionally serious offenses in the interest of public protection. In Indonesia, its legal development can be divided into four broad historical periods.

A. Dutch Colonial Period. The formal development of capital punishment in colonial Indonesia can be traced to the administration of Governor-General Herman Willem Daendels in 1808, when severe punishment was used as part of colonial disciplinary policy. Historical accounts also record public executions in locations such as town squares in Batavia/Betawi and Bekasi before the later codification of the WvS [13]. Capital punishment was subsequently incorporated into the Wetboek van Strafrecht voor Nederlandsch-Indie, which entered into force on 1 January 1918 under the principle of concordance. Article 10 placed the death penalty among the principal forms of punishment. This arrangement reflected a strongly retributive model in which criminal sanctions were also connected with the maintenance of colonial authority and the suppression of resistance [14]. A notable contradiction existed because the Netherlands had abolished capital punishment in its domestic system in 1870 while continuing to apply it in the Dutch East Indies.

B. Early Independence Period. After independence, Indonesia faced the practical problem of maintaining legal continuity while constructing a new national legal order. Through the transitional constitutional mechanism and subsequent legislation, including Law No. 1 of 1946 and Law No. 73 of 1958, the colonial criminal code was retained and adapted as the Indonesian Criminal Code. Capital punishment consequently remained in the national system and was attached to serious offenses affecting state security, including treason against the President and Vice President. The persistence of this sanction reflected both the inherited legal structure and the perceived need to protect the sovereignty of the newly established state [15].

C. Old Order and New Order Eras. During the Old Order, the use of capital punishment expanded through special legislation beyond the provisions of the Criminal Code. One example was Emergency Law No. 7 of 1955 concerning the Investigation,

Prosecution, and Trial of Economic Crimes. During the New Order under President Suharto, capital punishment was likewise incorporated into special criminal legislation, including Presidential Decree No. 11/PNPS/1963 concerning the Eradication of Subversive Activities. Within the political context of those periods, severe punishment was associated with the preservation of state authority, political stability, and national development, while rehabilitative considerations received comparatively less emphasis [15].

D. Reform Era to the New Criminal Code. The end of the New Order created greater space for constitutional and democratic debate about the continued legality of capital punishment. Judicial review petitions before the Constitutional Court questioned whether the death penalty was compatible with the constitutional protection of life under Articles 28A and 28I of the 1945 Constitution. The subsequent development of national criminal law culminated in Law No. 1 of 2023. Under the new Criminal Code, capital punishment is no longer positioned simply as a principal punishment; it is categorized as a special punishment with a conditional character and a ten-year probationary period.

3.2 The Influence of International Human Rights on National Criminal Law Policy

Changes in Indonesian capital punishment policy have occurred alongside the development of international human rights law. Several international instruments are particularly relevant, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Second Optional Protocol to the ICCPR, and the Convention Against Torture. Indonesia ratified the ICCPR through Law No. 12 of 2005. Article 6 of the Covenant recognizes the right to life and establishes restrictions concerning deprivation of life.

The international framework has contributed to a significant domestic debate. Abolitionist arguments emphasize that continued use of capital punishment is difficult to reconcile with commitments to human rights and constitutional guarantees. Retentionist arguments, however, maintain that a sovereign state may preserve the sanction for extraordinary offenses where it is considered necessary to protect society, including certain forms of terrorism, large-scale drug trafficking, and serious corruption [10].

The constitutional question received an important judicial response through Constitutional Court Decision No. 2-3/PUU-V/2007 concerning the death penalty under narcotics legislation. The Court concluded that capital punishment did not, in itself, contradict the 1945 Constitution. Its reasoning included the proposition that constitutional rights are subject to limitations under Article 28J when required to respect the rights of others and satisfy considerations of morality, religious values, security, and public order.

Although the Court did not abolish capital punishment, its reasoning also opened space for a more restrictive model of application. The idea of introducing a probationary period became relevant to subsequent reform discussions and was later reflected in the formulation of the 2023 Criminal Code [8]. Thus, constitutional adjudication and international human rights discourse both contributed to a gradual movement away from an unconditional conception of capital punishment.

3.3 The Direction of Death Penalty Reform in Indonesia's Criminal Law Reform

Comparative international practice shows several approaches to capital punishment. Some states have abolished it completely, many others retain it only in law but no longer execute prisoners, while a smaller group continues to carry out executions. Indonesia has not adopted complete abolition. Instead, the 2023 Criminal Code introduces a framework intended to limit and condition the application of the sanction, placing Indonesia between unrestricted retention and full abolition [16].

Table 1. Comparison of the legal position of the death penalty before and under the 2023 Criminal Code.

Regulatory Aspect	Former Criminal Code / WvS	2023 Criminal Code
Legal status	Death penalty classified as a principal punishment (Article 10).	Placed among special and alternative punishments (Article 67).
Nature of enforcement	Execution was treated as an absolute consequence after the judgment became final and binding.	Application is conditional and accompanied by a probationary period under Article 100.
Commutation mechanism	Reduction or alteration depended on the President's clemency authority.	The sentence can be changed to life imprisonment or imprisonment for a maximum of 20 years when the statutory evaluation requirements are fulfilled.

Article 100 of the new Criminal Code requires a ten-year probationary period to accompany a death sentence. In determining the sentence, the judge considers circumstances such as the offender's remorse, mitigating factors, and the person's role in the offense. The model therefore introduces an opportunity for the sentence to be reconsidered rather than treating execution as an unavoidable immediate consequence.

If the convicted person demonstrates commendable conduct during the probationary period, the death sentence may be converted into life imprisonment or a term of imprisonment of no more than twenty years through a Presidential Decree after consideration by the Supreme Court. In theoretical terms, this arrangement reflects the movement toward integrative punishment because it combines public protection with the possibility of rehabilitation and places capital punishment in the position of an ultimum remedium [17].

The new model does not, however, eliminate implementation difficulties. The assessment of 'commendable conduct' requires clear and measurable standards. In addition, variations in sentencing practices, particularly in narcotics cases, may create concerns about consistency and equal treatment [18]. The effectiveness of the reform therefore depends not only on the wording of Article 100 but also on the institutional mechanisms used to apply it.

4 Conclusions and Suggestions

The historical development of capital punishment in Indonesia demonstrates a gradual transformation in its legal and political orientation. During the Dutch colonial period, the sanction formed part of a repressive criminal system associated with colonial authority. After independence, it was retained as part of the inherited criminal law framework and was also used in relation to offenses considered threatening to state security. During the Old Order and New Order, its use expanded through special legislation and was closely connected with state stability and political policy.

The Reform Era brought stronger constitutional scrutiny and a wider human rights debate. International instruments, particularly the ICCPR, contributed to the discussion concerning the protection of life, while Constitutional Court Decision No. 2-3/PUU-V/2007 established that capital punishment was not inherently inconsistent with the 1945 Constitution. The Court's reasoning nevertheless supported the possibility of limiting its application, an approach that later became relevant to the reform of Indonesian criminal law.

Law No. 1 of 2023 represents a substantial change in the legal construction of capital punishment by treating it as a special and conditional punishment accompanied by a ten-year probationary period. The arrangement creates a middle position between abolition and unconditional retention and is consistent with an integrative understanding of punishment that recognizes both social protection and the possibility of rehabilitation. At the same time, the new framework should not be regarded as complete merely because the statutory classification has changed.

The principal practical challenge lies in ensuring that the probationary evaluation is objective, transparent, and consistently applied. Accordingly, implementing regulations should establish detailed criteria for determining commendable conduct and should

provide safeguards against institutional subjectivity. The Supreme Court and the Attorney General's Office should also develop transparent coordination procedures and ensure that judges and prosecutors have sufficient technical guidance to apply the new provisions consistently. These measures are important to reduce the possibility of unequal treatment and irreversible miscarriages of justice under the new Criminal Code.

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