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Analysis of Capital Punishment as a Last Resort in the National Criminal Justice System

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Abstract

This study examines the evolving position of capital punishment within Indonesia's criminal justice system in light of recent statutory reforms and persistent institutional shortcomings. Although Indonesia continues to retain and implement the death penalty, particularly for narcotics offenses, the enactment of KUHP 2023 and the emergence of the Draft Law on the Implementation of Death Penalty introduce a new conditional framework that formally positions execution as a last resort. Using a normative juridical method that analyzes legislation, judicial decisions, doctrinal writings, and international human rights instruments, this study evaluates the coherence of these reforms and their interaction with constitutional guarantees, fair-trial principles, and global penal trends. The findings reveal significant gaps between normative aspirations and institutional realities: inconsistencies in judicial reasoning, weaknesses in investigative procedures, ambiguous clemency standards, and limited correctional capacity undermine the reliability of capital sentencing. At the same time, the probationary model and conversion mechanism signal an emerging shift toward conditional retention that narrows—but does not eliminate—the scope of death penalty application. The study concludes that Indonesia's current framework represents a transitional phase marked by partial alignment with human rights norms yet constrained by structural fragilities that hinder the realization of capital punishment as a genuine last-resort measure.

Keywords: *Death Penalty; Indonesia Criminal Justice; KUHP 2023; Normative Juridical Analysis; Human Rights*

Introduction

Capital punishment remains one of the most contentious instruments in contemporary criminal justice systems, particularly within jurisdictions that continue to

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grapple with its legitimacy, proportionality, and compatibility with evolving human rights standards. Theoretically, the justification for capital punishment has long been contested across three dominant frameworks: retributive theory, which holds that the severity of punishment must correspond to the gravity of the offense; deterrence theory, which posits that the threat of death dissuades potential offenders; and rehabilitative theory, which fundamentally rejects irreversible punishment as incompatible with the state's obligation to reform offenders (Vasadze, Sisauri, & Bakaradze, 2025). Underpinning these debates is the principle of ultimum remedium—the doctrine that criminal punishment, especially in its most extreme form, must be reserved as the absolute last resort when no other sanction suffices to protect society. Indonesia represents a paradigmatic example of this tension. Despite global trends toward abolition, Indonesia continues to impose and carry out death sentences, especially in cases involving narcotics (Effendi, Dewi, & Saragih, 2025). The executions conducted in 2015—whereby 14 individuals, most of them foreign nationals, were executed in two batches—illustrate the enduring political commitment to capital punishment, framed as an urgent response to transnational drug crimes and a means of safeguarding future generations. President Joko Widodo's message during this period emphasized that the death penalty constituted a form of state responsibility to protect society, demonstrating a political-populist rationale that continues to shape death penalty discourse in Indonesia (Rifai, 2017).

Yet, the use of capital punishment within Indonesia's criminal justice system is increasingly scrutinized through the lens of human rights law and constitutional guarantees. International and national observers have pointed to systemic problems in law enforcement practices, judicial procedures, clemency mechanisms, and the overall fairness of criminal proceedings (Ghoni & Setiyono, 2024). These concerns intensified following the Constitutional Court Decision No. 34/PUU-XI/2013, which opened the possibility for repeated case review, raising debates over legal certainty versus substantive justice (Suastuti, Haq, Harimurti, & Yuherawan, 2024). Subsequent responses—including the Supreme Court Circular Letter No. 7 of 2014—reflect deep institutional inconsistencies and demonstrate how fragmented legal norms complicate the finality of death sentences. Similar concerns emerge in the practice of presidential pardon. Although Article 14 of the Constitution grants the President full authority to grant or deny clemency, the Pardon Law lacks a clear obligation to provide reasoned decisions, thereby enabling arbitrary and non-transparent outcomes with life-and-death

implications (Abadi, Noerdajasakti, & Madjid, 2025). From a human rights perspective, these structural deficiencies implicate Indonesia's obligations under the International Covenant on Civil and Political Rights (ICCPR), particularly with respect to the right to life, the right to a fair trial, and the prohibition against arbitrary deprivation of life—obligations that demand meaningful procedural safeguards at every stage of capital proceedings

Academic discourse over the last decade has increasingly illuminated these structural deficiencies while interrogating broader normative questions surrounding the death penalty (Dudai, 2023). Studies by (Arifullah, 2024) examine the global decline of capital punishment and emphasize the incompatibility of death penalty regimes with fair trial guarantees. In the Southeast Asian context, (Wasilczuk, 2018) highlights how drug-related executions often intersect with flawed investigations, coercive interrogations, and inadequate legal representation. More specific to Indonesia, (Pangaribuan, 2025), explores the common-law influences on Indonesian sentencing and identifies persistent weaknesses in evidentiary standards, while (Riyono, Buaton, & Suswantoro, 2025) and (Bessler, 2025) argue that Indonesia's death penalty practice frequently fails to meet international due-process obligations under the ICCPR. Collectively, this scholarship demonstrates a convergence of global and regional concerns about the continued use of capital punishment in legal systems marked by procedural vulnerabilities. However, a critical synthesis of this body of literature reveals that most studies engage with either the human rights dimension or the doctrinal dimension of Indonesia's death penalty in isolation—rarely integrating both within a coherent analytical framework that is also capable of assessing emerging legislative reform (Sovacool et al., 2020).

However, despite the breadth of scholarship, several significant gaps remain that this study seeks to fill. First, existing studies tend to focus narrowly on human rights critiques without systematically analyzing Indonesia's recent legislative reforms—particularly the 2023 Criminal Code (KUHP Nasional) and, most critically, Law Number 1 of 2026 on the Adjustment of Criminal Sanctions (UU No. 1 Tahun 2026 tentang Penyesuaian Pidana). These legislative instruments represent a landmark normative reconfiguration. Articles 98–101 of the new KUHP—as operationalized through UU No. 1 Tahun 2026—expressly frame capital punishment as a last resort (ultimum remedium),

introduce a 10-year probation period, and allow conversion to life imprisonment under certain conditions (Saefudin, 2021).

Article 99 of Law Number 1 of 2026 concerning Criminal Adjustments stipulates that the death sentence may only be carried out after the convict has failed to demonstrate commendable conduct during the probationary period and has not submitted—or has had rejected—a clemency application to the President; that execution shall not be conducted in public; and that execution shall be performed by firing squad or by such other method as determined by law. The provision further mandates postponement of execution for pregnant women, breastfeeding mothers, and mentally ill convicts. Pasal 100 further establishes that the court shall impose the death penalty with a 10-year probationary period, commencing one day after the judgment acquires permanent legal force; that if the convict demonstrates commendable conduct during this period, the death sentence shall be converted to life imprisonment by Presidential Decree upon the recommendation of the Supreme Court; and that the death sentence may not be carried out during the probationary period. Pasal 101 additionally provides that if a clemency application is rejected and the death penalty is not executed within 10 years from the date of rejection—provided the convict has not absconded—the sentence shall by operation of law be converted to life imprisonment.

Yet academic analyses rarely engage with the practical and doctrinal implications of these provisions, especially concerning lex favor reo, institutional coordination between the judiciary, the Attorney General, and the presidency, or the procedural vacuum regarding probation assessments. Second, there is limited research assessing whether Indonesia's shift toward a "conditional" death penalty reflects a substantive transformation toward de facto abolition, or whether it merely reshapes punitive discretion while retaining the death penalty as a viable instrument of state authority. Third, existing literature has not systematically analyzed unresolved normative and institutional contradictions in Indonesia's evolving death penalty framework—such as the lack of regulation concerning military executions, the ambiguity regarding execution methods, and inconsistencies between the Draft Law on the Implementation of the Death Penalty and KUHP 2023. What distinguishes this study from prior scholarship is precisely its focus on these underexplored institutional contradictions and its use of ultimum remedium and ICCPR due process standards as a dual analytical framework to assess both legal coherence and human rights compliance simultaneously.

This study seeks to address these gaps by offering a comprehensive analysis of capital punishment as a last resort within the reconfigured architecture of Indonesia's national criminal justice system (Mubarok & Pujiyono, 2025). The novelty of this study lies in its integrated examination of: (i) empirical realities of death penalty practice, including the controversies surrounding the 2015 executions; (ii) normative changes embodied in the 2023 Criminal Code and UU No. 1 Tahun 2026; (iii) institutional and procedural disparities revealed in constitutional and judicial decisions; and (iv) unregulated elements within the proposed legislation governing the execution of death sentences. By synthesizing doctrinal, empirical, and human rights perspectives—anchored in punishment theory and the ultimum remedium principle—this study provides a more holistic understanding of whether Indonesia's legal reforms signify an authentic paradigm shift toward restorative and rehabilitative penal policies or merely represent a rearticulation of punitive authority.

Accordingly, this study aims to: (1) critically evaluate the position of capital punishment within Indonesia's current and emerging criminal justice framework; (2) analyze the legal and institutional coherence of KUHP 2023 and Draft Law on the Implementation of the Death Penalty, including their implications for fair trial guarantees and constitutional protections; (3) assess the extent to which Indonesia's evolving death penalty policies align with global human rights standards and comparative penal trends; and (4) identify both conceptual and practical challenges in implementing capital punishment as a genuine "last resort." Through this analysis, the study offers insights into the future trajectory of Indonesia's penal policy and contributes to ongoing global debates on the legitimacy and sustainability of death penalty regimes.

Methods

This research employs a normative juridical method, focusing on the systematic examination of legal norms, statutory frameworks, judicial decisions, and doctrinal writings relevant to the regulation of capital punishment (Benuf & Azhar, 2020). Legal materials were selected through a structured, criteria-based process. Primary materials were chosen based on direct normative relevance, authoritative legal status, and temporal currency, encompassing the 2023 National Criminal Code—particularly Articles 98–101—Law Number 1 of 2026 on the Adjustment of Criminal Sanctions, the Draft Law on the Implementation of Death Penalty, the Pardon Law, the Code of

Criminal Procedure, Constitutional Court Decision No. 34/PUU-XI/2013, Supreme Court Circular Letter No. 7 of 2014, and international instruments including the ICCPR. Secondary materials were drawn from peer-reviewed journals and institutional reports sourced via HeinOnline and Google Scholar, using keywords such as capital punishment, ultimum remedium, due process, and penal reform, with inclusion limited to publications between 2017 and 2025 and sources directly addressing capital punishment doctrine, penal reform, or human rights compliance.

The analysis integrates three complementary legal approaches—statute, conceptual, and case—applied through a qualitative normative technique comprising three sequential stages: inventarization of relevant provisions, interpretation using grammatical, systematic, teleological, and historical methods, and evaluation against two explicit criteria: legal coherence, defined as internal consistency across legislative instruments and alignment with constitutional principles, and human rights compliance, defined as conformity with ICCPR standards and the UN Safeguards on capital punishment. Theoretical principles including ultimum remedium, lex favor reo, and fair trial doctrine serve as the overarching analytical framework, applied deductively to assess whether the evolving regulatory framework represents a substantive normative transformation or a reconfiguration of punitive discretion, thereby ensuring transparency, rigor, and replicability in the study's conclusions (Zainuddin & Karina, 2023).

Results and Discussion

The Position of Capital Punishment in Indonesia’s Contemporary Criminal Justice System

The current position of capital punishment within Indonesia's criminal justice system reflects a complex intersection of political considerations, historical legacies, constitutional interpretations, and institutional practices that collectively shape how death sentences are imposed and carried out. Although Indonesia continues to classify capital punishment as a lawful penalty, its application is embedded within a dynamic legal environment where statutory reforms, judicial developments, and policy debates constantly reshape the contours of its legitimacy (Djatmika, Istiqomah, & Kurniawan, 2024). The contemporary landscape reveals that Indonesia's retentionist stance is neither absolute nor uniform; it operates within a tension between punitive political rhetoric and an incremental legal trend toward restraint, conditionality, and procedural safeguards.

A defining feature of Indonesia's current approach is the dominance of political framing over legal coherence. Capital punishment is promoted primarily as a tool for addressing crimes perceived as existential threats, particularly narcotics offenses, positioning it as a shield against moral and social degradation (Solihah & Masyhar, 2021; Yanto, 2016). However, this rationale is not supported by empirical findings. Studies show no conclusive evidence linking executions with measurable deterrent effects on drug crime; instead, the persistence of drug networks and systemic corruption within enforcement institutions undermine the argument that death sentences function as an effective preventive mechanism (Calderoni et al., 2022). This mirrors patterns observed in other retentionist jurisdictions. In China and Iran, for instance, mass executions for drug offenses have similarly failed to demonstrably reduce trafficking, while drawing sustained international criticism—suggesting that the deterrence justification is structurally weak regardless of jurisdictional context. Thus, the position of capital punishment today is shaped less by demonstrable legal necessity and more by symbolic political messaging intended to reassure the public of state authority.

Public opinion research further illustrates how social perceptions sustain capital punishment's persistence. While a substantial portion of respondents express generalized support for the death penalty, this support is highly conditional: when presented with case details involving torture, wrongful conviction risks, or inconsistent application, support declines significantly (Bessler, 2023; Manik & Sunarso, 2020). This pattern—also documented in comparative studies from the United States and Japan, both retentionist democracies—demonstrates that public attitudes are neither static nor deeply morally grounded, but are heavily shaped by informational asymmetry. Policymakers who cite public sentiment as justification for retention therefore rely on a fragile and malleable foundation rather than informed democratic consensus

At the institutional level, Indonesia's legal structure reveals several contradictions. The revised Criminal Code introduces mechanisms that reframe the death penalty as a last resort, subject to probation, judicial review, and potential commutation—signaling an official shift toward conditional retention (Shaffer & Sandholtz, 2025). Yet the criminal justice system continues to exhibit structural weaknesses, including unreliable evidentiary practices, inadequate legal representation, coercive interrogations, and insufficient prosecutorial oversight. These deficiencies diminish the reliability of convictions in capital cases and place Indonesia at odds with evolving international

standards requiring heightened safeguards where life is at stake. Comparatively, jurisdictions such as South Korea and Taiwan—both of which have moved toward de facto moratoriums—demonstrated that institutional reform of investigative and evidentiary practices preceded and enabled meaningful reduction in capital punishment's application, suggesting that normative reform without institutional reform produces limited results.

The probationary model introduced in the new criminal code, while representing a meaningful humanization effort, places significant responsibility on institutional actors whose capacities remain uneven. Correctional institutions tasked with assessing rehabilitation progress face longstanding overcrowding, limited resources, and bureaucratic inefficiency (Ilijic, 2025). Without institutional readiness, the probation mechanism risks becoming a procedural formality rather than a substantive pathway for evaluating whether execution remains necessary—transforming the ultimum remedium principle from a genuine evaluative standard into a symbolic declaration.

Yudicial practice further reveals the contested positioning of capital punishment. Constitutional Court decisions have attempted to balance state authority with constitutional protections for human dignity, consistently declining to abolish capital punishment while emphasizing strict procedural safeguards and the possibility of case review through (PK) (Milzam & Syamsul, 2025; Naseem, Sethi, & Hashmi, 2025). THowever, the Supreme Court's circulars limiting repeated case reviews contradict the Constitutional Court's reasoning, reflecting an ongoing institutional struggle over the finality of death sentences (Putra, 2025). This inter-institutional conflict has no clear parallel in abolitionist jurisdictions such as the Philippines or Cambodia, where legislative action—rather than judicial inconsistency—drove abolition, underscoring that Indonesia's fragmented institutional responses produce normative uncertainty rather than coherent reform.

International norms exert additional pressure. Global trends show a steady movement toward abolition or limited retention, with most retentionist states reducing the scope of capital offenses or suspending executions in practice. Indonesia's continued executions for drug offenses place it among a shrinking minority, raising significant reputational and diplomatic implications (Salam & Karim, 2021). International human rights bodies consistently assert that drug trafficking does not meet the threshold of "most serious crimes" under UN standards, a position reinforced by the UN Human Rights Committee's concluding observations on states parties to the ICCPR. Although

these critiques do not legally compel abolition, they contribute to a shifting normative environment in which retentionist justifications become increasingly difficult to sustain on legal grounds (Hennebel & Tigroudja, 2025; Yustikaningrum, 2019).

Another critical dimension affecting the current position of the death penalty is the way law enforcement agencies operate. Reports in your files describe systemic issues in police investigations, ranging from procedural irregularities to allegations of torture used to extract confessions (Rizzelli, 2026). These issues undermine the reliability of convictions and therefore weaken the foundation upon which death sentences are imposed (Jie, Chii, & Althabhawi, 2023). A criminal justice system that allows flawed investigations to proceed uncorrected cannot guarantee that capital punishment is applied only in cases of unquestionable guilt. Consequently, the very existence of these systemic issues pushes the position of capital punishment into a precarious moral and legal zone (Gilani, 2023; Kassin et al., 2016). Instead of being a stable component of the legal system, its legitimacy becomes increasingly contested as awareness of wrongful conviction risks grows.

Taken together, these dimensions reveal that capital punishment in Indonesia occupies an ambiguous and transitional position. It remains legally authorized and politically defended, yet simultaneously constrained by legislative reforms, judicial interpretations, public skepticism, and institutional deficiencies. Whether this transition moves toward genuine restraint or merely reconfigures punitive discretion will depend on whether normative reform is matched by institutional transformation—a challenge that comparative experience from conditional-retentionist jurisdictions such as South Korea suggests requires sustained, coordinated reform across judiciary, executive, and correctional systems (Solihah & Masyhar, 2021).

An additional dimension shaping the contemporary position of capital punishment in Indonesia is the fragmentation of institutional authority in determining how and when death sentences are executed. Although the judiciary formally imposes the sentence, the execution ultimately depends on executive discretion, particularly through the clemency process. The files you provided highlight that the Indonesian pardon mechanism contains procedural ambiguities, including unclear standards for evaluating clemency applications and the absence of mandatory reasoning in presidential decisions. These gaps reduce transparency and weaken accountability, generating uncertainty for individuals on death row while also undermining public trust in the fairness of the

process (Novak, 2011). The interaction between judicial sentencing and executive powers therefore creates a dual-layered structure that complicates the practical implementation of capital punishment. This dynamic situates the death penalty as not merely a judicial sanction but as a politically mediated act, reinforcing the notion that its position within the justice system cannot be understood solely through statutory interpretation but must also account for institutional behavior and executive politics.

The influence of prosecutorial discretion further shapes the landscape. Prosecutors play a decisive role in determining whether to seek the death penalty in serious crimes, particularly drug trafficking. Yet the prosecution guidelines examined in the policy documents reveal inconsistencies in how criteria are applied. For example, decisions to pursue the death penalty often depend on broad interpretations of aggravating circumstances, such as the defendant's alleged role in a drug network or assumptions regarding societal harm (Burke, 2023). These interpretations can vary widely across jurisdictions, resulting in disparate outcomes for similar cases. This inconsistency positions the death penalty within a system where its application is not fully standardized, raising questions about proportionality and equality before the law. When prosecutorial discretion is exercised without clear and uniform guidelines, capital punishment becomes vulnerable to arbitrary or disproportionate use, further complicating its legitimacy within Indonesia's justice system (Baughman & Lillquist, 2024).

Moreover, the role of judicial reasoning in capital cases warrants careful attention. The files show that courts often rely heavily on confessions obtained during police investigations, even when disputes arise regarding the voluntariness of such confessions. In some cases, judges give limited consideration to allegations of coercion or procedural violations during pretrial detention. This pattern reveals a structural imbalance between the safeguarding of defendant rights and the prioritization of conviction objectives. When courts do not rigorously scrutinize investigative practices, the reliability of capital convictions becomes questionable (Welner, DeLisi, & Janusewski, 2025). The death penalty's position, therefore, cannot be detached from how judicial reasoning incorporates or overlooks procedural irregularities. The more the judiciary tolerates investigative weaknesses, the more precarious the foundation of death sentences becomes.

In addition to domestic institutional practices, Indonesia's evolving position must be evaluated in light of global human rights developments. The international documents

you provided indicate that the majority of states still retaining capital punishment are moving toward narrower application, informal moratoriums, or procedural reforms aimed at minimizing wrongful executions. While Indonesia has taken steps in this direction through the probationary model in the new criminal code, it continues to diverge from global trends in its broad retention for drug offenses. International bodies consistently assert that drug trafficking does not meet the threshold of "most serious crimes," placing Indonesia in tension with accepted human rights principles (Azcárraga, Matsudaira, Montagnat-Rentier, Nagy, & Clark, 2022). The files further highlight that Indonesia, while not legally bound to abolish the death penalty, faces increased scrutiny regarding alignment with international norms—particularly in the context of extradition agreements, diplomatic relations, and participation in multilateral human rights forums. As Indonesia's regional and global engagements deepen, the pressure to reconcile domestic policies with international expectations becomes more pronounced.

Public opinion data also contributes meaningfully to understanding the contemporary position of the death penalty. Although support for capital punishment appears relatively high in surveys, the files highlight that such support declines substantially when respondents are given information about wrongful convictions, discriminatory enforcement, or systemic flaws. This demonstrates that public attitudes are neither static nor uncritical; they are shaped by perceptions of institutional reliability. If confidence in the fairness of the criminal justice system deteriorates, public support for the death penalty becomes fragile. Policymakers often cite public sentiment as justification for retaining capital punishment, yet this justification weakens when societal support proves conditional and heavily dependent on narrative framing. Consequently, the position of the death penalty in Indonesian society rests precariously on a foundation of informational asymmetry, where incomplete understanding of systemic weaknesses inflates perceptions of legitimacy.

Political dynamics continue to play a significant role. Administrations may invoke capital punishment to signal strong governance, particularly in combating drugs or corruption. Yet such displays often serve symbolic purposes rather than functional ones, especially when executions do not demonstrably reduce crime rates. The documents note that high-profile executions sometimes coincide with political pressures or public anxiety about crime, suggesting that capital punishment may function more as a tool of political theater than as a measured legal remedy (Centeno & Ferraro, 2023). This further

contributes to the fluid and contested position of the death penalty within Indonesia's contemporary justice system, where legal, political, institutional, and societal factors intersect in shaping its continued retention.

Structural inequalities in legal representation constitute an additional dimension shaping the death penalty's position. Defendants facing capital charges frequently experience disparities in access to competent counsel, particularly during interrogation stages that shape the evidentiary basis of their cases (Reedy, 2023). This de facto stratification—where the likelihood of receiving a death sentence correlates with socioeconomic status—is not unique to Indonesia; it has been extensively documented in the United States and Malaysia, and represents a systemic challenge that undercuts the moral legitimacy of capital punishment regardless of the procedural framework surrounding it.

The Indonesian prison system further contributes to understanding how capital punishment operates today. Correctional facilities, particularly those holding death row inmates, are reported to face overcrowding, resource shortages, and inconsistent rehabilitation programs. The new criminal code's probationary framework for death sentences presumes that correctional institutions can provide meaningful assessments of inmates' conduct over a ten-year period. However, the files indicate systemic limitations in record-keeping, program availability, and evaluation mechanisms. If correctional institutions lack the capacity to implement these reforms effectively, the probation model risks becoming a procedural formality rather than a substantive review of moral and behavioral transformation. The position of capital punishment in Indonesia thus depends not only on legal reform but also on the operational readiness of institutions tasked with evaluating the humanity of condemned individuals.

Another element shaping the current position of the death penalty is the way evidence is interpreted within the courts. Forensic capacity, although improving, remains uneven across regions. The reports describe instances where expert testimony is either unavailable or underutilized, leading courts to rely disproportionately on narratives provided by law enforcement officials. In capital cases, where evidentiary standards should be exceptionally rigorous, reliance on incomplete or imbalanced evidence carries significant risks. Courts that treat confessions or circumstantial evidence as sufficient may inadvertently lower the threshold for imposing the death penalty. This judicial tendency reflects an underlying assumption of institutional reliability that is not always supported by empirical findings within the policy documents (Agusta, Pujiyono,

Sa'adah, & Putra, 2025; Cook, 2019). Such patterns reveal that the death penalty's position is influenced by habits of judicial reasoning that may not fully align with the procedural safeguards expected in cases involving irreversible punishment.

Furthermore, the position of capital punishment in Indonesia cannot be detached from the broader political economy of crime control. The files highlight that the narcotics trade involves complex networks that transcend national borders, implicating corruption within law enforcement, customs, and other regulatory bodies. When corruption infiltrates investigative and prosecutorial stages, the fairness of capital trials becomes compromised. Defendants may face enhanced charges, selective prosecution, or manipulated evidence depending on institutional incentives and vulnerabilities (Sitompul & Sitompul, 2022). These systemic issues erode the moral foundation upon which the death penalty claims legitimacy. If the process that produces death sentences is itself susceptible to corruption, the position of capital punishment becomes morally and legally unstable.

Regional comparisons add further context to Indonesia's position. Several Southeast Asian states with historically retentionist policies have moved toward reduced application, moratoriums, or limitation of capital punishment to specific categories of offenses. The policy reports note that regional trends are heavily influenced by diplomatic considerations, human rights commitments, and evolving judicial philosophies. Indonesia has engaged in some alignment with these trends by introducing conditional death sentences, yet retains a broad statutory scope for capital punishment (Chan, Sato, & Hor, 2025). This dual position places Indonesia in a transitional category, where partial reforms coexist with persistent practices. Such a hybrid stance generates ambiguity in regional and international perceptions, affecting Indonesia's ability to project human rights credibility while maintaining internal policy preferences.

The psychological and social dimensions of death row confinement contribute to understanding the position of capital punishment. Long periods of uncertainty, often extending beyond a decade due to appeals, clemency processes, and administrative delays, impose profound psychological strain on inmates. The reports describe symptoms consistent with "death row phenomenon," including anxiety, depression, and hopelessness. These conditions raise ethical concerns about whether prolonged confinement under the threat of execution constitutes a form of cruel or degrading

treatment. Although the legal system frames the probation model as a more humane alternative, indefinite waiting can exacerbate mental suffering, calling into question whether the combination of long-term confinement and the possibility of eventual execution aligns with constitutional protections of human dignity. Thus, the position of capital punishment in Indonesia is shaped not only by legal rules but also by the human impact of how those rules are operationalized.

Legal Coherence, Human Rights Alignment, and the Challenges of Implementing Death Penalty as a Last Resort

The legal coherence of Indonesia's death penalty regime under the new Criminal Code and the Draft Law on the Implementation of Death Penalty presents a complex normative terrain marked by ambitions of reform, structural ambiguities, and tensions between punitive traditions and emergent human rights considerations (Nurfatlah, Amiruddin, & Ufran, 2020). The introduction of Articles 98–101 of the new Criminal Code reflects an explicit shift toward positioning capital punishment as a last resort, an orientation that attempts to bridge Indonesia's retentionist policy with global movements toward conditional abolition. Yet this aspiration must be examined against the functional realities of the legal architecture governing the imposition and execution of death sentences, particularly as articulated in the draft implementing law. The interaction between these two instruments determines whether the death penalty truly operates as an ultimum remedium or whether the legal framework reproduces contradictions that hinder its alignment with fundamental rights principles.

Article 98 represents the first formal normative statement that the death penalty in Indonesia is "alternative and a last resort to prevent crime and protect society." At first glance, this wording indicates a reorientation away from the traditional posture that viewed death as a categorical punishment for certain severe offenses. However, the effectiveness of such a provision depends on the consistency of its integration across statutory, procedural, and institutional domains. A statement that the death penalty is alternative becomes meaningful only if judicial, prosecutorial, and executive practices internalize this characterization (Fariduddin & Tetono, 2022). Legal coherence therefore requires the entire criminal justice chain to uphold the principle of last resort as a guiding framework rather than a symbolic or rhetorical clause.

The probationary scheme introduced by Article 100 provides a mechanism intended to operationalize this shift. By requiring judges to impose a 10-year probationary period

when issuing a death sentence—based on remorse, potential for rehabilitation, or diminished culpability—Indonesia attempts to humanize the process and mitigate the absolutism commonly associated with capital punishment. The possibility of converting death sentences into life imprisonment underscores a move toward conditional retention. Yet this reform raises questions regarding consistency of judicial interpretation. The criteria for determining "remorse" or "hope for improvement" remain largely qualitative and discretionary, leaving significant variations in judicial reasoning (Ambos, Duff, Roberts, Weigend, & Heinze, 2020). Without clear guidelines for assessing these subjective dimensions, the probation mechanism risks being applied unevenly, thereby affecting the coherence of the system as a whole.

In addition, the requirement that the probation period begins "one day after the decision becomes final" presupposes that all appeal and review mechanisms have been exhausted, which interacts directly with the clemency framework under Article 99. The legal coherence between these provisions becomes fragile when considering the potential overlap between clemency rejection and the expiration of the probation period. For example, a prisoner whose clemency request is rejected immediately after conviction becomes final may still benefit from the ten-year probation mechanism, but the relationship between executive discretion and judicial conditionality remains unclear (Esser, 2025). The new criminal code situates the President as the gatekeeper of the transition between life and death, yet simultaneously positions the judiciary as an evaluator of moral transformation. This duality contributes to institutional tension because the standards applied by the courts and those applied by the presidency need not align. The potential discrepancy creates normative uncertainty in determining how "last resort" is ultimately interpreted in practice.

The Draft Law on the Implementation of Death Penalty introduces another layer of complexity. Whereas the Criminal Code frames the death penalty as conditional and evaluative, the draft implementing law lays out a highly technical, procedural, and administrative blueprint for executions. The coherence between the aspirational nature of Articles 98–101 and the mechanical precision of execution rules must be evaluated in determining how Indonesia conceptualizes the "last resort" principle. For example, the procedural requirements under Articles 6–8 of the draft law illustrate an attempt to regulate the health, pregnancy status, mental condition, and physical readiness of the convict prior to execution. While these provisions are consistent with global human

rights recommendations that prohibit executing pregnant women, nursing mothers, individuals with terminal illnesses, or those with mental disorders, they also reveal the tension between ensuring humane treatment and maintaining capital punishment as a legitimate instrument of the state.

The health-based deferral mechanisms contained in Articles 6–8 pose deeper questions about the consistency of the system. If a person develops a mental disorder during the probation period, the state is required to postpone execution until the individual "recovers." This approach implicitly assumes that mental capacity can be restored to a level that ethically permits execution. Yet human rights principles emphasize that any deterioration in mental health—particularly arising from prolonged death row confinement—undermines the legitimacy of execution altogether. Prolonged probation combined with prolonged uncertainty may constitute conditions that violate international norms on inhumane or degrading treatment. Thus, the deferral mechanisms, while humane on the surface, risk producing human rights inconsistencies if they are used to "preserve" individuals for execution at a later date.

The standard of "health" as a prerequisite for execution also challenges the broader claim that capital punishment is a last resort. If a prisoner becomes terminally ill, thereby approaching natural death, executing them after temporary recovery appears incongruent with both the principles of last resort and proportionality. The draft law does not address whether a terminal condition that is irreversible should convert a death sentence automatically into life imprisonment, leaving a gap in normative logic. Therefore, although the implementing law provides extensive procedural detail, its interaction with the last-resort principle remains underdeveloped.

The procedural requirements governing the timing and location of execution also contribute to assessing legal coherence. Article 12 mandates that execution occur within 30 days of the Attorney General's decision, in a closed and restricted environment, with access limited to authorized personnel. This is consistent with the new Criminal Code provision prohibiting public executions. Eliminating publicized executions aligns with international human rights standards that consider public execution inherently degrading. However, the narrow time frame of 30 days signals a shift toward administrative efficiency rather than reflective decision-making. When considered alongside the possibility of presidential intervention under Article 14 of the implementing law, the legal architecture reflects a rapid procedural chain that contrasts with the broader narrative of caution and restraint suggested by the Criminal Code. The

speed of execution once triggered denies the condemned meaningful temporal space to pursue residual legal remedies, such as additional psychological evaluation, petitions for religious counseling, or requests for diplomatic intervention in cases involving foreign nationals.

The interaction between presidential authority and prosecutorial implementation is another critical aspect of legal coherence and human rights alignment. Article 14 allows the President to provide considerations that either halt or permit execution. If the President rejects execution, the Minister must propose conversion of the sentence into life imprisonment. The law even introduces a mechanism whereby failure to act within 90 days results in automatic conversion. This "silence as approval" provision reflects an emerging trend toward limiting executive hesitance by ensuring default outcomes that favor the condemned. From a human rights perspective, this aligns with international norms promoting the reduction of death penalty use. However, the normative design also creates institutional friction, because the Attorney General retains authority to determine the timing and logistics of execution once the President does not intervene. The presence of multiple decision-making centers—judiciary, presidency, prosecutor's office—produces a system where the coherence of the last-resort principle depends heavily on inter-institutional coordination, which in practice is often inconsistent.

The draft law's focus on detailed procedures—such as the formation of firing squads, the positioning of shooters, the mechanism for final shots, and the management of bodies—reflects a model of bureaucratic execution that contrasts sharply with the humanized orientation expressed in the Criminal Code. This excessive proceduralization may unintentionally normalize execution as a routine administrative function. From a human rights viewpoint, procedural precision can reduce cruelty during execution, but it can also obscure larger normative questions regarding whether the death penalty should remain at all. The institutional emphasis on operational detail risks overshadowing the broader substantive commitment to treat execution as a last resort.

In this context, the legal coherence between the Criminal Code and the draft implementing law becomes a central question. The Criminal Code aims to reduce the role of capital punishment, emphasizing conditionality and transformation, whereas the draft implementing law focuses on regulating procedures for executions in a way that ensures administrative consistency (Putri, HZ, & Ardiyanto, 2025). These two approaches, though not inherently contradictory, reflect different visions of the death

penalty's place in the legal order. The Code conceptualizes it as exceptional; the implementing law treats it as a functional option. The challenge lies in harmonizing these perspectives so that procedural regulation does not undermine the normative aspiration to move toward reduced reliance on execution.

Human rights alignment also requires examining whether Indonesia's evolving legal framework meets the standards articulated in international instruments such as the ICCPR, the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, and the interpretations of international human rights bodies. One key principle is the requirement that capital punishment be restricted to the "most serious crimes," usually interpreted as intentional killings. Indonesia's retention of capital punishment for drug-related crimes places it in tension with international opinion. While the new Criminal Code reframes the death penalty as alternative, it does not reduce the scope of offenses eligible for death. The implementing law similarly does not distinguish between categories of crimes in prescribing execution procedures (Yustitianingtyas, Irawan, & Stansyah, 2025). Consequently, the introduction of probationary schemes and deferral mechanisms—though progressive—does not resolve the underlying misalignment between domestic law and global human rights standards concerning the substantive scope of capital offenses.

Another human rights concern relates to the potential for arbitrary application. The requirement that the Attorney General determine execution timing, the flexibility allowed to the President in granting or withholding clemency, and the subjective nature of judicial assessments under Article 100 create opportunities for differential outcomes across similar cases. Without consistent criteria, two defendants convicted of similar crimes may experience divergent trajectories—one receiving commutation due to perceived remorse, the other executed due to differing interpretations of the same standards. The risk of arbitrariness is heightened by systemic factors identified in various policy analyses, such as uneven investigative practices, disparities in legal representation, and potential coercion in obtaining confessions. Although these concerns belong broadly to the fairness of the criminal justice process, they directly affect human rights alignment in capital cases, where the irreversible nature of punishment demands heightened procedural integrity (Kassin et al., 2025).

The legal framework must also be evaluated in light of the psychological and human impact of prolonged death row confinement, which international bodies increasingly consider a form of cruel or inhumane treatment. The new Criminal Code's probationary

period could extend the uncertainty experienced by inmates, while the implementing law's detailed procedures may intensify psychological stress once the execution phase begins. Ensuring that the probation mechanism does not exacerbate suffering requires institutional capacity to provide regular psychological support, transparent evaluation processes, and humane prison conditions, factors that remain challenging in Indonesia's correctional system.

When integrating all of these dimensions—statutory design, institutional configuration, procedural detail, and human rights alignment—the position of the death penalty as a last resort in Indonesia emerges as legally possible but institutionally fragile. The reforms signal a transitional moment where Indonesia attempts to reconcile a punitive legacy with evolving human rights expectations. Legal coherence depends on harmonizing the normative aspirations of the Criminal Code with the practical mechanisms of the draft implementing law, while human rights alignment requires narrowing the substantive scope of the death penalty, strengthening procedural safeguards, and ensuring that institutional actors internalize the principle of exceptionalism.

In its current form, the legal framework allows for meaningful movement toward a restrained death penalty regime, but only if the implementing law is integrated in a way that reinforces—not undermines—the principle of last resort. The challenge lies not merely in drafting coherent laws but in cultivating institutional behavior, judicial consistency, executive transparency, and enforcement integrity. Without structural improvements in these areas, the aspiration of treating death as a last resort risks remaining a formalistic declaration rather than a transformative shift in Indonesia's criminal justice system.

Conclusion

This study demonstrates that Indonesia's evolving death penalty framework occupies a transitional and internally contested position, wherein political imperatives to retain capital punishment coexist with normative reforms seeking to embed it within a last-resort paradigm. While KUHP 2023 and Law Number 1 of 2026 introduce significant structural innovations—particularly the probationary model and conditional commutation under Articles 98–101—the coherence of these reforms is weakened by ambiguities in presidential clemency, inconsistencies in judicial interpretation,

procedural rigidity in the draft implementing law, and systemic deficiencies across investigative, prosecutorial, and correctional institutions. Theoretically, this study contributes to punishment theory and the doctrine of ultimum remedium by demonstrating that conditional retention is legally viable but institutionally contingent—the ultimum remedium principle cannot function as a genuine legal standard through statutory declaration alone, but requires systemic internalization across all institutional actors within the criminal justice chain, an analytical framework replicable in comparative studies of death penalty reform across retentionist jurisdictions in Southeast Asia and beyond.

To translate normative aspiration into substantive reform, concrete policy interventions are essential across three institutional levels. At the legislative level, the most urgent priority is narrowing capital-eligible offenses to align with the ICCPR's "most serious crimes" threshold by removing drug-related offenses from the scope of capital punishment, accompanied by standardized criteria for probationary assessments under Article 100 to replace the current reliance on unconstrained judicial and executive discretion. At the judicial level, the Supreme Court must issue comprehensive sentencing guidelines operationalizing ultimum remedium and lex favor reo in capital cases, and the institutional contradiction between the Constitutional Court's recognition of expanded case review and the Supreme Court's limitation of Peninjauan Kembali must be resolved in favor of substantive justice. At the executive and correctional level, the presidential clemency mechanism requires structural reform mandating reasoned and transparent decisions, while correctional institutions must be equipped with the evaluation protocols and rehabilitation infrastructure necessary to conduct meaningful probationary reviews—without which the ten-year probation model risks functioning as procedural formality rather than genuine safeguard. Future research should examine empirical sentencing patterns under Articles 98–101, assess institutional readiness for probationary implementation, and explore comparative regional trajectories—particularly those of Taiwan, South Korea, and Singapore—toward de facto abolition. The author extends sincere appreciation to colleagues, reviewers, and institutional partners whose critical insights and support made this research possible.

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