



A review of the philosophical justification of the death penalty within the framework of criminal law politics in Indonesia

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Abstract

The death penalty is a form of criminal sanction that continues to spark philosophical, moral, and legal debate in various countries. The differing views between countries that retain and those that have abolished the death penalty demonstrate the complexity of the values of justice, human rights, and legal politics in the modern criminal system. In the Indonesian context, the validity of the death penalty remains in various laws and regulations, including the new Criminal Code, thus necessitating a philosophical study of the justification for its implementation. This study uses normative legal research methods with conceptual and legislative approaches, through a qualitative literature review. The results show that the basic idea of the death penalty in Indonesia can be understood from several perspectives, namely the perspective of national legal politics, the purpose of punishment, the values of Pancasila and human rights, and the decisions of the Constitutional Court. From all these perspectives, it is found that the death penalty still has a philosophical justification within the framework of national criminal law politics as an instrument to balance legal certainty, justice, and practicality, as reflected in the formulation of the death penalty in the new Criminal Code.

Keywords: Death penalty, philosophical justification, criminal law politics, human rights

Introduction

Death penalty legal policy reflects the direction of state policy in regulating and shaping the death penalty system. This issue remains a hot topic because it concerns human rights. Opposition to the death penalty is generally based on the belief that it violates the fundamental right to life. (Arief, 2014; Heriyanto, 2023) ^[3, 10].

Globally, countries are divided between those that still practice the death penalty and those that have abolished it. China, Saudi Arabia, Iran, the United States, and Indonesia are among those that still practice it. China is in the spotlight because its number of executions is estimated to reach 60% of the world's total, with thousands of cases carried out annually. (Arief, 2014; Rohmah, 2023) ^[3, 24].

The United States and Saudi Arabia still actively implement the death penalty, with hundreds of executions. In Indonesia, dozens of people have been executed in recent years, primarily for drug offenses, terrorism, and premeditated murder. Although corruption is a crime punishable by death, there has never been an execution for it. Globally, the death penalty has not been fully abolished, although the trend is downward (Arief, 2014; Institute for Criminal Justice Reform, 2018) ^[3, 13].

Since the Universal Declaration of Human Rights (1948), only about 6-7 countries have abolished the death penalty. Today, approximately 70% of countries have abolished or implemented a moratorium. Some countries, such as the Philippines, have reinstated it but then revoked it, while reversals are extremely rare. The trend of abolition continues to grow, with an average of three countries abolishing it each year. European Union countries, Australia, Canada, and many parts of Asia and the Americas have abolished the death penalty. Pressure from international cooperation is also driving this abolition, as

experienced by Turkey in its process of joining the European Union (Arief, 2014; Wardani, 2023) ^[1, 3].

The death penalty, despite widespread opposition, still commands significant support. Each execution sparks debate between those for and against it. Opposition is typically based on moral and religious grounds, as well as doubts about the efficacy of this punishment. Criticism also points to the weakness of the judicial system, which could convict innocent people, and to violations of the right to life guaranteed by the Universal Declaration of Human Rights (UDHR) and the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945) (Heriyanto, 2023) ^[10].

The death penalty in the Criminal Code (KUHP) remains controversial among the public and legal experts. Opposition arises because it is considered a violation of human rights and contrary to the principle of resocialization. Conversely, supporters consider the death penalty effective in suppressing crime and in line with human rights protections, including the rights of victims. Some religious teachings also recognize the death penalty under certain circumstances. However, bureaucratic oversight of its implementation is considered suboptimal (Amiruddin, 2023) ^[1].

This debate shows the importance of in-depth study to examine the basic ideas and position of the death penalty in the national criminal law system which continues to develop and become the political ideal of Indonesian criminal law (Sari, 2023) ^[25].

Methodology

This research is legal research. According to Morris L. Cohen in Peter Mahmud Marzuki, "Legal research is the process of finding the law that governs activities in human society." According to Morris L. Cohen, legal research focuses more on law in societal practice. (Peter Mahmud

Marzuki, 2014. p 57). Legal research according to Morris L. Cohen is more towards law in social practice. Legal research is a scientific activity based on certain methods, systems, and ideas, through analysis. A thorough examination of the legal facts is carried out, and then efforts are made to find solutions to the problems that arise in the relevant phenomena. (Soerjono Soekanto, 2014, p 43) ^[3].

Through a literature review, this study collected various legal sources such as laws, scientific journals, textbooks, and other official documents related to the death penalty (Wangi, 2023; Silviana, 2025) ^[29, 34]. The collected data were then analyzed descriptively and interpretively to identify key issues, arguments, and trends relevant to the research topic (Editorial Team, 2019). This qualitative analysis also involved comparing and evaluating various existing legal views and theories to provide a comprehensive understanding of the justification for the basic idea of the death penalty within the political ideals of criminal law in Indonesia (Sari, 2023; Yuliani, 2022) ^[25, 37].

Results

1. Implementation of the Death Penalty in Indonesia

a. Implementation of the death penalty before the enactment of the new Criminal Code (KUHP) Law Number 1 of 2023 ^[1]

The death penalty in Indonesia is one of the main types of punishment recognized by law. Article 10 of the Criminal Code states that the main penalties include the death penalty, imprisonment, detention, and fines (Supreme Court, Badilag. (Undated); Hukumonline. (Undated); Hukumonline. (2022) ^[11]. In addition to the Criminal Code, the death penalty is also regulated in other laws, which shows the importance of this punishment in the criminal justice system (Sukoharjo Regional Prosecutor. (Undated); Kompas. (2022) ^[15].

Existing regulations indicate that the death penalty is applied to various types of crimes, not only the most serious crimes under international law, but also including economic, political, and drug crimes (PID Polda Kepri. (Nd); Sippn.menpan.go.id. (2023); Unsrat (2020) ^[30, 32].

From the number and timing of the enactment of laws regulating the death penalty, Indonesia appears to be expanding its application without any indication of abolition. In fact, the types of crimes that can be subject to the death penalty continue to increase, although they are not always categorized as the most serious crimes according to *the International Covenant on Civil and Political Rights* (ICCPR) (Sukoharjo District Attorney. (Nd); Kompas. (2022) ^[15]; PID Polda Kepri. (Nd); Sippn.menpan.go.id. (2023) ^[30]. the following describes the philosophical legal reasons related to the application of the death penalty:

1. Criminal Code (KUHP) The death penalty as formulated in Article 104, Article 111 paragraph (2), Article 124 paragraph (3), Article 140, Article 340, Article 365 paragraph (4), Article 444, Article 368 paragraph (2). The death penalty is still enforced in Indonesian positive law, as stated in the Criminal Code and various other regulations. In the explanation of the formation of the law, the existence of the death penalty is linked to the special conditions of Indonesia as a former Dutch colony (Putra: 2011). At that time, the diversity of society and the potential for conflict were the reasons why the death penalty was considered an effective tool to maintain legal order and implement the

government's criminal policy. Although the past context is no longer relevant, philosophically the death penalty is still considered in line with the nation's ideology. Based on these considerations, the author is of the view that the Criminal Code needs to be adjusted to the nation's values reflected in Pancasila. The death penalty is also considered to be in line with Pancasila and remains regulated as a principal crime in Article 10 of the Criminal Code.

2. Government Regulation in Lieu of Law No. 21 of 1959 concerning the Threat of Punishment for Economic Crimes. Article 1 paragraph (1) and paragraph (2). Law No. 21 (Prp) of 1959 concerning Economic Crimes contains the threat of the death penalty in Article 1. This punishment can be imposed if the economic crime is committed under aggravating conditions, such as causing chaos in the community economy. This article also requires prosecutors and judges to prove the existence of aggravating circumstances in the charges or verdict.
3. Law Number 31/PNPS/1964 ^[31] concerning the basic provisions of the atomic energy. Article 23. The death penalty is regulated in Article 22 of the Law concerning atomic energy. Article 23 regulates the protection of state interests, where violations are punishable by severe penalties.
4. Law No. 35 2009 concerning narcotics. Article 80 paragraph (1), paragraph (2), paragraph (3), Article 81 paragraph (3), Article 82 paragraph (1), paragraph (2), and paragraph (3), Article 83. The threat of the death penalty in the Narcotics Law is formulated selectively, not aimed at all perpetrators of narcotics crimes. Users and abusers are not included, because this punishment only applies to producers and distributors of illegal class I narcotics such as marijuana and heroin. The law also stipulates that the death penalty is accompanied by a minimum sentence, so it can only be imposed if there is very strong evidence.
5. Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption. Article 2 paragraph (2). The author is of the opinion that the Criminal Code needs to be adjusted to the national character based on Pancasila, and the death penalty is considered not to be in conflict with these values. In Article 10 of the Criminal Code, the death penalty has been established as one of the main types of punishment. The general explanation of Law No. 31 of 1999 also emphasizes that the threat of the death penalty is implemented to support the effectiveness of prevention and eradication of criminal acts of corruption.
6. Law No. 26 of 2000 concerning the Human Rights Court. Articles 36, 37, 41, and 42 paragraph (3). Protection of human rights must be viewed holistically, not only limited to the rights of individuals or perpetrators of crimes, but also encompasses the rights of victims and affected communities. Therefore, the existence of the Human Rights Court Law is important as an effort to protect society at large and prevent violations of the right to life. The death penalty does not contradict the spirit of Law No. 26 of 2000 concerning the Human Rights Court. Articles 36 and 37 expressly contain provisions for the death penalty, meaning this punishment does not violate human rights.

However, its application is limited only to the crimes of genocide and crimes against humanity. Genocide includes actions aimed at destroying a group based on nation, race, ethnicity, or religion, while crimes against humanity include widespread or systematic attacks on civilians. Therefore, this law remains based on the protection of the right to life, but does not rule out the possibility of imposing the death penalty for crimes that endanger the survival of humanity.

7. Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism Article 6, Article 8, Article 9, Article 10, Article 14, Article 15, Article 16. The death penalty is regulated in Law No. 15 of 2003 concerning Criminal Acts of Terrorism. Terrorism is classified as *an extraordinary crime* and *a crime against humanity*, so its handling is different from ordinary crimes. The death penalty is imposed as a form of law enforcement against perpetrators of extraordinary crimes who are deemed unable to return to society, as well as to create a deterrent effect among the public.

In criminal law policy, the death penalty remains the most severe sanction. This provision is reflected in the 2022 Criminal Code (KUHP) regulations.

1. Article 67. The special punishment as referred to in Article 64 letter e is the death penalty which is always threatened as an alternative.
2. Article 98. The death penalty is threatened as an alternative as a last resort to prevent criminal acts and to protect society.

3. Article 99

- 3.1 The death penalty may be carried out after the convict's request for clemency has been rejected by the President.
- 3.2 The death penalty as referred to in paragraph 1 shall not be carried out in public.
- 3.3 The death penalty shall be carried out by shooting the convict to death by a firing squad or by other means as determined by law.
- 3.4 The execution of the death penalty against pregnant women, women who are breastfeeding their babies, or mentally ill people is postponed until the woman gives birth, the woman is no longer breastfeeding her baby, or the mentally ill person recovers.

4. Article 100

- 4.1 The judge can impose the death penalty with a probationary period of 10 (ten) years by taking into account:
 - a. The defendant's sense of regret and hope for self-improvement;
 - b. The role of the defendant in the crime; or
 - c. There are mitigating reasons.
- 4.2 The death penalty with a probationary period as referred to in paragraph (1) must be stated in the court decision.
- 4.3 The 10 (ten) year probationary period begins 1 (one) day after the court decision has permanent legal force.
- 4.4 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 receiving consideration from the Supreme Court.

4.5 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.

5. Article 101. If a death row convict's application for clemency is rejected and the death penalty is not carried out for 10 (ten) years since the clemency was rejected, not because the convict has escaped, the death penalty can be changed to life imprisonment by Presidential Decree.
6. Article 102. Further provisions regarding the procedures for implementing the death penalty are regulated by law.

The death penalty is intended to protect the interests of society at large, including protection for victims and the restoration of disturbed social values. The death penalty in the National Criminal Code (KUHP) maintains the death penalty as a special principal punishment, as reflected in the Explanation of Article 67. This punishment applies limitedly to certain crimes such as narcotics, terrorism, corruption, and human rights violations (HAM) because it has different characteristics from other crimes (Arief, 2014; Sari, 2023) ^[3, 25].

As the most severe punishment, the death penalty is always accompanied by alternatives such as life imprisonment or 20 years. The main difference between the new Criminal Code (KUHP) and the old one is that the implementation of the death penalty now requires certain conditions. The new Criminal Code (KUHP) no longer considers it a principal punishment, but rather a special punishment that can only be applied in certain cases and as a last resort after the conditions in Article 100 of the Human Rights violation (KUHP) are met (Mulyana, 2023; Kurniawan, 2023) ^[17, 18].

The ratification of the death penalty in the new Criminal Code (KUHP) demonstrates the direction of Indonesian criminal law policy, which increasingly prioritizes respect for human rights. This principle aligns with the 1966 *International Covenant on Civil and Political Rights* (ICCPR), which guarantees everyone's right to life and prohibits its arbitrary deprivation. Article 6, paragraph 2 of the ICCPR permits the death penalty only for serious crimes, in accordance with applicable law, not in conflict with the ICCPR and the Genocide Convention, and must be based on a legally binding court decision (Putri, 2023; Halimatussadiyah, 2020) ^[7, 21].

Globally, there is no absolute prohibition on the death penalty that applies to all countries. The ICCPR only limits its application with strict conditions. Efforts to achieve complete abolition are only regulated in the *Second Optional Protocol to the ICCPR* (1989), which is binding only on ratifying countries. Indonesia ratified the ICCPR through Law No. 12 of 2005, but has not ratified the additional protocol (Amiruddin, 2023; Halimatussadiyah, 2020) ^[1, 7].

2. Basic Ideas of the Death Penalty from a Legal Perspective

The New Criminal Code's perspective is that the formulation of the death penalty is based on two main objectives: protecting society from emotional reactions that lead to arbitrary or extrajudicial actions, and providing a legal channel for the expression of people's emotions to

prevent uncontrolled personal revenge. Therefore, the death penalty remains regulated by law, but its application must be selective and careful to maintain a balance between law enforcement and the protection of human rights (Wahyuni, 2023; Amiruddin, 2023) ^[1, 33]. Likewise, the New Criminal Code changes the approach to the death penalty to an alternative one. Convicts are given a ten-year probationary period, and if they demonstrate behavioral changes and meet certain requirements, their sentence can be commuted to life imprisonment. Thus, the death penalty is no longer the primary punishment, but rather a special and conditional one (Hasanah, 2023; Ramadhan, 2020) ^[8, 23].

According to Barda Nawawi Arief's doctoral perspective, the death penalty aims to curb irrational urges for revenge. Its inclusion in the Criminal Code allows judges to impose it rationally and in a measured manner, thereby protecting society from emotional retaliation. This view aligns with Emile Durkheim's theory of punishment as a channel for emotions resulting from crime, as well as Schwartz & Skonick's view of punishment as a means of expressing the urge to retaliate (Arief, 2014; Amiruddin, 2023) ^[1, 3].

From the perspective of Pancasila, in the 1945 Constitution of the Republic of Indonesia, and the perspective of Human Rights in Law No. 39 of 1999 concerning Human Rights, the death penalty can be viewed in a balanced manner. Pancasila as a value system opens up space for different views regarding the death penalty, both those who support and reject it. The right to life in Articles 28A and 28I of the 1945 Constitution of the Republic of Indonesia and Article 9 paragraph (1) and Article 4 of Law No. 39 of 1999 does not absolutely reject the death penalty, because this right can still be legally limited. This is in line with Article 6 paragraphs (1) and (2) of the ICCPR, which recognizes the right to life but still allows the death penalty for the most serious crimes within strict limits. Several international documents such as the Economic and Social Council (ECOSOC) Resolution 1984/50 and the Commission on Human Rights Resolution 1961/61 also emphasize the same thing (Halimatussadiyah, 2020; Putri, 2023) ^[7, 21].

Furthermore, Article 73 of Law No. 39 of 1999 and Article 28J of the 1945 Constitution state that rights and freedoms may be limited for the public interest and to respect the rights of others. In the new Criminal Code, the death penalty has shifted from a principal penalty to a special penalty, reflecting a new approach that pays more attention to human rights and caution. This penalty remains in place, but is imposed as an alternative under Article 66 of the Criminal Code (Kurniawan, 2023; Mulyana, 2023) ^[17, 18].

From a criminal justice perspective, the death penalty is not the primary means of organizing or developing society, but rather is used only as a last resort. The death penalty can be compared to amputation in medicine—not the primary action, but a last resort. Many countries reject the death penalty for moral and religious reasons, stating that only God has the right to take life, its low effectiveness, a weak judicial system that risks convicting innocent people, and its conflict with human rights, especially the right to life.

Indonesia, including several other countries, continues to maintain the death penalty. The reasons put forward include, Based on the perspective: The Constitutional Court in its dissenting opinion stated that the death penalty does not conflict with the 1945 Constitution of the Republic of Indonesia because it does not adhere to the absolutism of Human Rights (HAM); This death penalty protects victims;

is considered effective in dealing with serious, sadistic crimes; the law must also be fair to victims; and as part of positive law, the death penalty must still be carried out for the sake of legal certainty. Indonesia also rejects external pressure because the rule of law must be maintained. The new Criminal Code uses an alternative approach to the death penalty, namely giving a 10-year probation period for convicts, and if they show improvement, the sentence can be commuted to life imprisonment. Thus, the death penalty is no longer the main punishment, but rather a special and alternative one.

From a sentencing perspective, the death penalty is not the primary means of reforming individuals or communities. It is more of a last resort, like amputation in medicine, only performed when all other options have failed (Sari & Nugroho, 2021; Hasanah, 2023) ^[8, 28].

It confirms that Indonesia still implements the death penalty for several reasons. In a 2007 ruling, the Constitutional Court stated that the death penalty does not conflict with the 1945 Constitution because human rights are not absolute. This punishment is also considered to protect victims, a means of addressing serious crimes, and a form of respect for victims' rights. Furthermore, because it remains valid under positive law, the death penalty must continue to be implemented as part of legal certainty and state sovereignty (Sari & Nugroho, 2021; Putri, 2023) ^[21, 28].

Conclusion

Based on the various descriptions above, the issue of the death penalty which until now is still pro and con, but from various legal perspectives described above, starting from the perspective of the implementation of the new Criminal Code, the doctoral perspective, the perspective of Pancasila and human rights, the perspective of the purpose of punishment, and the perspective of the Constitutional Court shows that the basic idea of the death penalty is a relevant justification to continue to be applied in the national legal system as a political ideal of national criminal law in Indonesia. And until now Indonesia still maintains the death penalty in its legal policy, reflected in various regulations that stipulate it as a criminal threat. Even in the new Criminal Code, this punishment is still recognized as a form of criminal sanction.

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