

The Critical Study of Criminal System for Death Row Convicts Who Have Not Been Executed After the Enactment of National Criminal Code

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Abstract. *This article discusses the fate of death row inmates who have not been executed after the enactment of the National Criminal Code. The writing of this article uses a non-doctrinal legal method with a qualitative approach, this study uses primary and secondary data, and triangulation techniques. The focus of the research includes three problem formulations regarding the death row inmate punishment system after the enactment of the National Criminal Code, policies for death row inmates who have not been executed, and alternative policies that can be applied. The results of the study indicate that the National Criminal Code provides a 10-year probation period and the opportunity for sentence commutation for convicts who demonstrate good behavior. This policy reflects reforms in the Indonesian criminal system with an emphasis on rehabilitation and protection of human rights. The writing of this article is expected to contribute to the development of a more humane criminal law policy.*

Keywords: Code; Criminal; Death; Penalty.

1. Introduction

The implementation of the death penalty in Indonesia has become a controversial issue and continues to trigger debate in various circles. Although the death penalty is still regulated in the Criminal Code (KUHP), its implementation often faces various obstacles such as a long legal process, requests for clemency, and political considerations. In practice, a number of death row inmates who have been sentenced to death must wait for an uncertain execution time, sometimes even for years after the final verdict. Several cases such as major narcotics and terrorism cases are real examples of the enforcement of the death penalty, where executions are often postponed for procedural reasons or special considerations. Prolonged delays in executions not only create legal uncertainty, but can also affect the concept of human rights of death row inmates, including the right to life guaranteed in the constitution. On the other hand, delays in the execution of death row inmates also burden the families of the inmates, the community, and the government who must face pressure from both within the country and abroad. So that

the postponement of the execution of death row inmates reflects an imbalance between strict law enforcement and the principle of justice that respects human dignity.

The existence of regulations governing the death penalty began when the death penalty was located in a special situation of the Indonesian state which at that time was a Dutch colony. The death penalty could not be abolished because of how dangerous it would be if legal order was disturbed so that there was a greater threat to the population, so that this situation became a consideration for the death penalty to be maintained, the death penalty was used as a weapon for legal order which was considered the most powerful for political criminals from the government at that time. When compared to the current situation, the death penalty is no longer relevant to be included and applied, but when considered philosophically the death penalty is still in line with the nation's ideology. Legal sociologists argue that in its application the death penalty is currently not effective because all religions teach forgiveness, so that the statement that death belongs to the creator is true, and in its application the death penalty is more directed at a case, so that the implementation of the death penalty becomes protracted and creates legal uncertainty over the quality of life of the death row inmates. In positive law, the death penalty is regulated in Article 10 of the Criminal Code where in positive law, the death penalty is a type of principal punishment. In addition to the Criminal Code, the death penalty is also regulated in laws and regulations outside the Criminal Code. Although the application of the death penalty is no longer effective with the application of the death penalty during the Dutch colonial period (Sipayung et al., 2023). However, the principle that criminals who are considered unable to return to society due to the crimes they have committed, in this case extraordinary crimes, still stands firm in the enforcement of the death penalty, because if the death penalty is abolished, it is considered to be able to endanger legal order. However, in its implementation, it also creates legal uncertainty for death row inmates who have not been executed and they continue to wait even for years with the status of death row inmates without any certainty when they will be executed.

The delay in the execution of the death penalty in Indonesia is caused by various factors, one of which is the long legal process, including extraordinary legal efforts such as appeals, cassation, and judicial review. These processes often take years due to the complexity of the case and the high caseload in the courts. In addition, a request for clemency to the President is also the last legal mechanism often submitted by death row convicts. The process of submitting and granting clemency often takes a long time because it must consider many aspects, one of which is humanitarian and political factors. The lack of trust of the constitutional court in the criminal justice system means that legal decisions can no longer be seen as pure legal efforts, because they have been influenced by politics. When viewed from an international perspective, international organizations such as Amnesty International, Human Rights Watch, and the United Nations (UN) are consistent with the principle of abolishing the death penalty and urging the Indonesian government to stop executions. This factor is a serious challenge in enforcing national law and the obligation to respect international norms related to human rights. Several countries such as France, Brazil and China have openly highlighted the enforcement of the death penalty carried out by Indonesia. Therefore, Indonesia must be careful in implementing or enforcing the death penalty, so that there needs to be political assertiveness to demonstrate its sovereignty.

The reform of the criminal justice system in the National Criminal Code brings important updates, especially regarding the death penalty. One significant change is the regulation regarding the conditional death penalty, which allows for the reduction or change of the death penalty to life imprisonment or imprisonment for a certain period. This is regulated in Article 100 of the National Criminal Code, which states that the death penalty can be imposed conditionally with a probationary period of 10 years. (President of the Republic of Indonesia, 2023). If during the probationary period the convict shows good behavior, then the death penalty can be changed to another punishment according to the court's decision. (Alin, 2017). The National Criminal Code also regulates alternative punishments that provide space to consider the social and personal conditions of the convict. Article 101 and Article 102 of the National Criminal Code provide the option of life imprisonment, imprisonment for a certain period of time, or other punishments that are considered more in accordance with the principles of justice and humanity. In the National Criminal Code, the principle of balance is the main foundation in the criminal justice system which is designed to harmonize legal certainty, justice, and the benefits of the law. However, in practice, clashes between legal certainty and justice still often occur, especially in cases involving severe punishments such as the death penalty. Legal certainty means that the law must be applied firmly and consistently in accordance with applicable regulations. A person who is proven guilty according to the law must receive the appropriate punishment without exception. Legal certainty is one of the principles in the justice system that functions to create justice and order in society. This principle emphasizes that every individual has the right to know and understand the applicable law, and to receive protection from arbitrary actions. For convicts sentenced to death, legal certainty is very important because it concerns the right to life and human dignity. Even though they have been sentenced to death, their rights must still be respected and protected. This includes the right to receive clear information about the legal process they are facing, the right to appeal or other legal remedies, and the right to receive humane treatment during detention.

With legal certainty, death row inmates have the opportunity to fight for their rights, including in filing for pardon or judicial review. So that it can create space for convicts to get justice, and can ensure that the execution of the death penalty cannot be carried out carelessly or without a clear legal process. (Siregar, 2022). The existence of a legal mechanism that provides an opportunity for death row inmates to fight for their rights is an important aspect of a just justice system. This mechanism includes various legal procedures designed to ensure that every convict who, even though sentenced to death, still has access to file a legal appeal. The legal mechanism functions as a supervision of the execution of the death penalty. With clear and transparent procedures, the risk of errors in law enforcement can be minimized. (Satria Perdana, SH, 2024). Based on the provisions of the National Criminal Code which regulates the legal procedures for convicts who are given the opportunity to file various legal remedies and the existence of regulations governing pardons. Referring also to legal certainty, it functions as a guarantee that every individual has the opportunity to obtain justice, as well as protection of their rights. A justice system that not only focuses on law enforcement but also on respect for humanitarian values and social justice. So, how is the criminalization system for death row convicts after the enactment of the National Criminal Code? What is the policy for death row convicts who have not been executed after the enactment of the National Criminal Code? What are the alternative policies that can be applied to death row convicts who have not been executed after the enactment of the National Criminal Code?

Based on the above problems, in writing this law, the author aims to analyze the criminal punishment system for death row convicts after the enactment of the National Criminal Code, identify policies for death row convicts who have not been executed after the enactment of the National Criminal Code, and formulate alternative policies that can be applied to death row convicts who have not been executed after the enactment of the National Criminal Code.

2. Research Methods

This study uses a type of Non-Doctrinal or Sociological Juridical legal research with a qualitative research approach. The focus of the research is focused on Law No. 1 of 2023 concerning the Criminal Code. The data sources used in this study are in the form of primary data sources and secondary data sources, with primary legal materials in the form of laws and regulations related to the problems raised. The data collection method used in this qualitative research is the triangulation technique which checks the validity of the data. Meanwhile, the data analysis method used is an interactive model in the form of data reduction, data presentation, and drawing conclusions (Do Lab, 2021).

3. Results and Discussion

3.1. The Sentencing System for Death Row Convicts After the Enactment of the National Criminal Code

Law No. 1 of 2023 concerning the Criminal Code or hereinafter referred to as the National Criminal Code. The National Criminal Code introduces several significant changes to death row convicts. The National Criminal Code sets out four objectives of punishment, namely preventing criminal acts, socializing convicts, resolving conflicts, and fostering a sense of regret in convicts. This shows a shift from a retributive approach to a restorative and rehabilitative approach. These objectives aim to enforce legal norms in order to provide protection and care for the community. By enforcing the law effectively, it is hoped that the community will avoid criminal acts because of the deterrent effect and enforcement of social norms. The objectives contained in the National Criminal Code aim to resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace to society. With the aim of fostering a sense of regret and freeing the convict from guilt, the objectives of the National Criminal Code show that punishment is not only as revenge, but also as a means to improve oneself and increase moral awareness. (Padang & Siregar, 2024).

In the National Criminal Code, the death penalty is included in the category of special punishments that are applied alternatively to life imprisonment or a maximum imprisonment of 20 years. The death penalty is always regulated alternatively to life imprisonment or a maximum imprisonment of 20 years. This shows that the death penalty is the *ultimum remedium*, which is only used in very serious cases. The death penalty is no longer the main punishment but rather a special punishment applied in certain situations as stated in Article 67 of Law No. 1 of 2023. This shows a significant change in the approach to punishment, where the death penalty is only considered as a last resort after all other alternative sentencing options have been considered. Convicts sentenced to death are given a probationary period of 10 years before execution. During this probationary period, the death penalty can be changed to life imprisonment if the convict shows commendable attitudes and actions. Articles 98 and 99 of the National

Criminal Code state that the death penalty can be applied as an effort to prevent criminal acts and in terms of protecting the community. The article explains that the death penalty can only be carried out after the President rejects a request for clemency. Article 100 of the National Criminal Code stipulates that the death penalty is given a probationary period of 10 years, during which time the death penalty can be changed to life imprisonment if the convict shows commendable attitudes and actions.(President of the Republic of Indonesia, 2023).

The National Criminal Code takes into account the principles of human rights, especially the universally recognized right to life. The application of the death penalty must be in line with these human rights principles and should only be used in very serious circumstances. Before the execution of the death penalty, the convict has the right to apply for clemency. As stated in Article 100 of the National Criminal Code, the death penalty will only be implemented after the request for clemency has been rejected by the president. This ensures that all legal efforts have been taken before the implementation of the death penalty. The National Criminal Code emphasizes the importance of consistency in the implementation of the law to ensure that the application of the death penalty can be carried out fairly and accountably. Thus, the National Criminal Code seeks to achieve a balance between law enforcement and the protection of human rights, thereby ensuring that the death penalty can be applied fairly and humanely.(Hartono et al., 2025).

3.2. Policy on Death Row Convicts Who Have Not Been Executed After the National Criminal Code Comes into Effect

The application of the death penalty is still a topic of debate, not only in Indonesia but also in various countries. Indonesia as one of the countries that still implements the death penalty, although there has been a reform of criminal law in Indonesia still maintains the death penalty in its criminal law system, especially in the Criminal Code (KUHP). In Indonesia, the death penalty is applied to certain crimes such as treason and crimes that violate human rights. In the National Criminal Code, the death penalty is regulated as an alternative punishment, not as a principal punishment as in the old Criminal Code. In Indonesia, death row convicts are monitored for their behavior by correctional institutions, can be converted to life imprisonment through a Presidential Decree after consideration by the Supreme Court if they show self-improvement, after which the execution will be carried out if there is no change in behavior through an order from the attorney general. The implementation of the death penalty in Indonesia is carried out in a closed place, in accordance with the legal principle that prioritizes respect for human dignity, even though the convict has been sentenced to death. The process towards the implementation of the death penalty execution takes a very long time. In many cases, convicts on death row have to wait years or even decades to reach the execution stage. Data shows that as of October 4, 2024, there were 557 death row inmates in Indonesia still awaiting execution, 11 of whom were women.(Trikarinaputri, 2024). In 2025, there were approximately 300 death row inmates who had not been executed.(Sukamto, 2025). The implementation of the death penalty in Indonesia is different from other countries, while in Malaysia the notification of the implementation of the death penalty is carried out one to two days before without any postponement procedure so that death row inmates in Malaysia will experience a relatively short waiting period for execution due to the lack of legal efforts.

The implementation of the death penalty in Indonesia tends to be more complex compared to Iran and Malaysia. If Malaysia has a non-transparent pardon process and the pardon board is said to rarely meet the convict. Then in Iran, there is minimal transparency in the court process, Iran uses the hanging penalty as the main method listed in the Iranian National Criminal Code. The National Criminal Code tries to balance through a 10-year waiting period as a form of caution in deciding the execution of the death penalty and the application of the principle of *ultimum remedium* or as a last resort. This is different from Somalia which carries out executions by shooting without any legal process and the death penalty is more targeted at terrorism and treason. In the United States, the implementation of the death penalty using lethal injection is considered more humane, but still draws international protests for minority cases.

After the revision of the National Criminal Code, the Indonesian criminal justice system has undergone a significant transformation in handling death row inmates who have not been executed. In the renewal of criminal law in Indonesia, in this case the National Criminal Code, it shows an effort to balance the implementation of the death penalty and human rights by providing rehabilitation opportunities and lighter sentences for death row inmates. However, challenges in implementation and the potential for fraud within government institutions that have authority remain a concern. In other countries besides Indonesia, such as China and Thailand, even though there is a probationary period, the implementation of the death penalty still faces criticism, especially related to human rights.

Table 1. The Comparison of Death Penalty Policies in Several Countries.

Country	Death Penalty Policy	Current Status
Philippines	Abolishing the death penalty (2006)	Permanent moratorium
Myanmar	Defended for drugs & human trafficking	Active executive
Brunei	Legally Defended	No executions since 1957
Cambodia	Abolished (1989)	Not applicable
Malaysia	Abolition of the mandatory death penalty (2023)	Moratorium since 2018

In addition to Indonesia, Myanmar has also made changes to its regulations regarding the death penalty. In 1993, the death penalty in Myanmar was expanded to include drug trafficking and in 2005 human trafficking was also included in the category of crimes punishable by death. The death penalty in Myanmar is contained in Articles 353 and 373 of the 2008 Constitution, which state that a person cannot be sentenced to death except

in accordance with the law in force at the time of the offense. However, this right can be limited by Article 382 of the Myanmar Constitution which allows for the waiver of fundamental rights in certain circumstances.(Pssat, 2016). Following the reform of Myanmar's criminal law, there has been a change in the policy of unexecuted death row inmates. To date, there are hundreds of death row inmates still awaiting execution, including those sentenced under the terrorism law. In 2022, the Myanmar military junta began executing four political prisoners, marking the return of the death penalty after more than three decades without executions. Myanmar's constitution stipulates that the death penalty can only be carried out in accordance with the law in force at the time of the offense, but that right can be restricted in certain circumstances.(Triwibowo, 2022). Despite efforts to reform and reduce the death penalty in several ASEAN countries, Myanmar still maintains the death penalty policy for certain crimes, especially those related to serious crimes such as terrorism and human trafficking.(ANT, 2015).

Likewise, the policy for convicts in Indonesia after the criminal law reform, that the assessment mechanism for death row convicts who have been waiting for execution for more than 10 years has also been regulated in the National Criminal Code. So that it gives hope for the enforcement of human rights that the death penalty policy in Indonesia is starting to soften. There are also recommendations from various groups for Indonesia to impose a moratorium on executions and establish a more humane punishment mechanism. However, although the death penalty is still in effect, legal reform provides an opportunity for convicts on death row to get a reduced sentence based on good behavior during the probation period(Iftitahsari, Adhigama Andre Budiman, 2024).

3.3. Alternative Policies That Can Be Applied to Death Row Convicts Who Have Not Been Executed After the National Criminal Code Comes into Effect

After the enactment of the National Criminal Code in Indonesia, there were significant changes in the criminal system, especially regarding the death penalty. The National Criminal Code introduced an alternative policy for death row inmates who had not been executed with the aim of providing rehabilitation opportunities and a more humane approach. In the case of a 10-year probationary period as regulated in the National Criminal Code, if the death row inmate shows good attitudes and behavior during the probationary period, the death sentence can be changed to life imprisonment. This commutation process is carried out through a presidential decree after receiving a recommendation from the Supreme Court. Death row inmates also have the right to submit a request for clemency to the president, if the request for clemency is rejected and the death execution is still not carried out within 10 years, then the sentence can be changed to life imprisonment.

The death penalty commutation policy in Indonesia as regulated in the National Criminal Code has a very significant influence on the president's decision in handling death row convicts. In the commutation process, the president is required to ask for advice from the Supreme Court. However, there is no clear deadline regarding when the president must ask for such advice, which could potentially cause delays in decision-making. The lack of certainty about the deadline is considered unfair to the convict because it can slow down the commutation process and increase the psychological burden on the convict.(Son, 2018).

With the enactment of the National Criminal Code, there are questions regarding the fate of death row inmates who have not been executed, especially death row inmates who have undergone a 10-year probationary period but have not been executed, then the convict will receive treatment based on the provisions in Article 100 and Article 101 of the National Criminal Code. The National Criminal Code regulates a 10-year probationary period, during this probationary period the execution cannot be carried out and as a form of opportunity for the convict to show positive behavioral changes. If the convict shows good attitudes and behavior during the probationary period, the death penalty can be changed to life imprisonment through a presidential decree after receiving consideration from the Supreme Court. An assessment mechanism will be carried out to determine whether the convict is worthy of commutation. The assessment does not only apply to death row inmates who were sentenced after the National Criminal Code came into effect but also to convicts who have been awaiting execution for more than 10 years before the National Criminal Code came into effect. So there are two categories of death row inmates who will undergo the assessment process, namely for those who have been sentenced after the National Criminal Code and one for convicts who have existed before. After assessing the convict's behavior, if the convict shows positive changes, the Supreme Court will make a recommendation to the President to change the death sentence to life imprisonment(Savannah, 2024).

If the death row convict is not executed within 10 years after the pardon is rejected, then the death sentence can be changed to life imprisonment by presidential decree as stipulated in Article 101. The National Criminal Code also includes provisions regarding the procedures for implementing the commutation of the death penalty which will be further regulated through Government Regulations. Article 621 of the National Criminal Code states that these implementing regulations must be stipulated no later than two years after the National Criminal Code is enacted. Although the policies in the National Criminal Code are a form of step towards a more humane criminal justice system that prioritizes human rights and also provides further regulations through implementing regulations, there are still various opposing opinions or criticisms regarding the policies contained in the National Criminal Code.

There is an opinion that if the pardon is rejected then the execution should be carried out, not changed to life imprisonment. With the National Criminal Code regulation, death row convicts must wait 10 years for a probationary period, where after 10 years of probation the judge must make a decision through an evaluation carried out on the death row convict. While the judge must make a decision at trial based on the existing facts, but how can the judge ensure that the convict will become a good individual within 10 years. This idea shows the government's indecisiveness in making decisions, this regulation also creates legal uncertainty for convicts. That the death penalty should be firm, if someone is sentenced to death then the execution must be carried out without carrying out a probationary period that is so long(Handcuff Patrol, 2025).

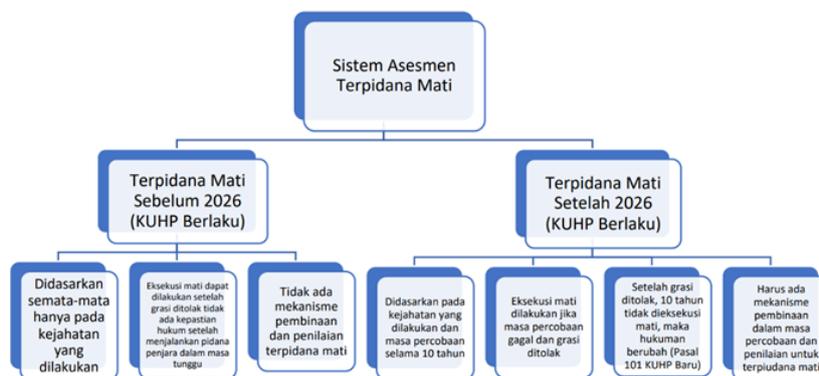


Figure 1. Death row assessment mechanism

4. Conclusion

The regulation that ensures an assessment of the differences in conditions between death row inmates before and after the enactment of the National Criminal Code is in line with the objectives of punishment as stipulated in Article 51 in conjunction with Article 98 of the National Criminal Code. Punishment aims to protect society while providing guidance to convicts so that they can transform into good individuals. In the explanation of Article 98 of the National Criminal Code, it is stated that the death penalty is imposed with a probationary period so that during this period the convict is expected to improve himself so that the implementation of the death penalty does not need to be carried out and can be replaced with life imprisonment. Therefore, there needs to be further regulation or mechanism for individuals who have been sentenced to death and are undergoing guidance in correctional institutions before the enactment of the National Criminal Code. The assessment method must be different for death row inmates who have been sentenced after the enactment of the National Criminal Code.

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