

TRANSFORMATION OF THE MODERN DEATH PENALTY: FROM A PRINCIPAL PENALTY TO SPECIAL PENALTY

Cut Nurita
Universitas Darma Agung, Medan, Indonesia
cutnurita12@gmail.com

Muhammad Ridwan Lubis
Universitas muslim nusantara al washliyah, Medan, Indonesia
muhammadridwanlubis76@gmail.com

Ahmed Kheir Osman
Somali National University, Mogadishu, Somalia
Ahmedkheirosj@gmail.com

Abstract

This study aims to analyze the status of the death penalty within Indonesian criminal law and examine the direction of its regulation within the framework of modern criminal law. The research employs a normative-juridical method utilizing statutory, conceptual, historical, comparative, and human rights approaches. The results indicate that the death penalty is transforming into a special form of punishment applied only in limited circumstances. Significant changes position the death penalty as an alternative sanction and link its execution to a ten-year probationary period. The findings highlight several issues requiring further attention, particularly the risk of irreversible wrongful convictions, the quality of legal aid, disparities in access to defense, the effectiveness of the death penalty as a deterrent, and the relationship between the death penalty and the right to life. The study implies a need to apply the death penalty under extremely rigorous procedural standards, strengthen guarantees for a fair trial, and develop sentencing policies aligned with modern trends that prioritize the individualization of punishment and the evaluation of potential sentence commutation.

Keywords: *Criminal Law; Death Penalty; Transformation;*

A. INTRODUCTION

Law is an instrument that regulates all aspects of societal life.¹ Every criminal offense gives rise to legal consequences that are adjusted to the nature of the act, the degree of culpability, the consequences caused, and the interests that criminal law seeks to protect. Within the spectrum of criminal sanctions, the death penalty occupies the most severe position

¹ Felix Eka Firtin Smit Kandun Mas, etc, Hukuman Mati dalam Perspektif Pidana dan HAM, *Referendum: Jurnal Hukum Perdata dan Pidana* 1, no. 4 (Desember 2024): 11-24

because its implementation ends the life of the convicted person and is irreversible. Accordingly, discussion of the death penalty is directly related to fundamental interests in human life and liberty. The debate over capital punishment takes place in philosophical, sociological, and juridical domains because each perspective offers a different assessment of the relationship between state authority, public protection, retribution, crime prevention, and respect for the right to life.² This position makes the death penalty a form of punishment that requires the strictest legal and procedural justification compared with other types of criminal sanctions.³

The Indonesian criminal justice system places judges' decisions as the highest manifestation of the law enforcement process.⁴ The relationship between the death penalty and human rights is important because the state's authority to impose punishment is always limited by the principle of protecting fundamental rights. Article 28A of the 1945 Constitution of the Republic of Indonesia guarantees the right to life, while Article 28I paragraph (1) places the right to life among rights that cannot be reduced under any circumstances. At the international level, Article 6 of the International Covenant on Civil and Political Rights recognizes the right to life and restricts the application of the death penalty in states that have not abolished it, particularly to the most serious crimes and under strict legal procedures. This framework shows that the death penalty is discussed not merely as a form of sanction, but also as a question concerning the limits of state authority when exercising punitive power over a person's most fundamental right.⁵ In this context, guarantees of the right to life and a fair trial become parameters for assessing whether the state's exercise of punitive authority is consistent with the Constitution and human rights standards.⁶

Historically, two main streams of thought have developed. Retentionists maintain the death penalty on the grounds that it can reflect the gravity of the crime, satisfy demands for retribution, protect society from offenders considered extremely dangerous, and is expected to produce a deterrent effect. Abolitionists question the death penalty because of its finality, the risk of wrongful conviction, the possibility of unequal treatment of defendants, and its position within the development of protection for the right to life. This debate has continued to evolve as the purposes of punishment have shifted from a retributive orientation toward a combination

² Ni Komang Ratih Kumala Dewi, "Keberadaan Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana (KUHP)", *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 104-114

³ Tongat, Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives, *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 2024): 90-104

⁴ Andhika Yuli Rimbawan, Harmonization of Judicial Decisions: Analysis of Compliance with Jurisprudence and Application of the Principle of Legality in Special Criminal Cases, *Journal Critical Legal System (JCLS)* 1, Issue. 1 (April 2026): 19-37

⁵ Elizabeth Wicks, *The Right to Life and Conflicting Interests* (Oxford: Oxford University Press, 2010): 35-46.

⁶ Daffa Ihsan Ghifari and Rakhmat Bowo Suharto, Searches in the Indonesian Criminal Procedure System Based on Human Rights Perspective, *Jurnal Daulat Hukum* 9, no. 2 (June 2026): 515-527

of public protection, prevention, rehabilitation, and individualized sentencing.⁷ These two streams demonstrate that assessments of the death penalty are connected to fundamental choices concerning the purposes of punishment and the limits of state power over the lives of citizens.⁸

The deterrence argument also requires empirical testing. A number of comparative studies show that the relationship between the death penalty and reductions in homicide rates does not provide a consistent empirical basis for concluding that capital punishment has a stronger deterrent effect than long-term or life imprisonment.⁹ Therefore, the relevance of the death penalty in modern criminal law must be assessed through more than one justificatory basis. The analysis must also consider procedural justice, the risk of judicial error, proportionality, the rights of victims and society, and the legal system's capacity to assess changes in the conduct of convicted persons.¹⁰ Accordingly, claims regarding deterrence must be treated as empirical propositions that require research-based proof, rather than being assumed solely from the severity of the sanction.¹¹

Indonesia's historical context cannot be separated from the influence of Dutch colonial criminal law. When the *Wetboek van Strafrecht* was applied in the Dutch East Indies, the death penalty was retained for a number of serious offenses, even though the Netherlands had abolished capital punishment for ordinary crimes in 1870. This difference shows that death penalty policy during the colonial period was shaped by different legal-political considerations in the colonizing state and the colony. The legacy of colonial regulation subsequently influenced the development of Indonesian criminal law, although national policy after independence changed through the Constitution, human rights legislation, and reform of the Criminal Code.¹² Changes in social values, constitutional developments, and Indonesia's acceptance of human rights instruments later created a new context distinct from the colonial legal-political foundation.¹³

⁷ Abdul Jalil Salam and Zahlul Pasha Karim, Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist. *e-Journal Lentera Hukum* 8, no. 1 (2021): 115-150

⁸ Muhammad Ansari, Re-Explaining the Urgency of the Death Penalty in Realizing a Deterrent Effect in Cases of Premeditated Murder, *Jurnal Daulat Hukum* 7, no. 4 (December 2024): 380-390

⁹ Muhammad Rafly Putratama and Andri Winjaya Laksana, The Effectiveness of the Death Penalty as an Instrument of Legal Firmness Against Drug Dealers, *Jurnal Hukum Khaira Ummah* 20, no. 2 (June 2025): 709-728, DOI: <https://doi.org/10.30659/jhku.v20i2.46120>

¹⁰ National Research Council, *Deterrence and the Death Penalty* (Washington, DC: National Academies Press, 2012): 2-6.

¹¹ M. Irsyad Haryanto and Joko Setiyono, Conditional Death Penalty Policy in the New Criminal Code: An Analysis of the 10-Year Probation Period from the Perspective of International Human Rights, *International Journal of Law* 12, no. 2 (2026): 317-321.

¹² David T. Johnson and Franklin E. Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford: Oxford University Press, 2009): 23-27.

¹³ Yudi Alvisahrin, Eko Soponyono, and Umar Ma'ruf, The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law, *Law Development Journal* 4, no. 1 (March 2022): 170-181, DOI: <https://doi.org/10.30659/ldj.4.1.170-181>

Comparison with the Netherlands also reveals a different direction of development. The Netherlands abolished the death penalty from ordinary criminal law in the nineteenth century and later became bound by the European human rights protection system.¹⁴ Protocol No. 13 to the European Convention on Human Rights abolishes the death penalty in all circumstances for States Parties. Indonesia operates within a different legal framework because it continues to retain capital punishment. This comparison is relevant because it shows that the development of the death penalty is strongly influenced by legal history, national policy choices, and the human rights protection system applicable in each country.¹⁵

The study by Naufal Al Farisy and Mitro Subroto considers the regulation of capital punishment in Indonesia to be in tension with the guarantee of the right to life,¹⁶ while Gisella Tiara Cahyani places the controversy over the death penalty within debates on effectiveness and human rights protection.¹⁷ The study by Muhammad Andy Hakim and Joko Setiyono also emphasizes that Indonesia's death penalty issue must be analyzed through the relationship between national law and the concept of human rights.¹⁸ The development of the National Criminal Code then introduces a new dimension because the death penalty is positioned as a special punishment imposed alternatively and linked to a probationary period. These three studies provide the comparative foundation for the present research, particularly in assessing whether the conditional death penalty model under the National Criminal Code changes the character of a debate that previously centered on the opposition between retention and abolition. This reform also enables the present study to assess normative implications that were not the principal focus of earlier research.

This study aims to explain the transformation of the legal position of the death penalty and to assess its implications for Indonesian criminal law. The discussion is organized around the existence of capital punishment in Indonesian law, policy changes under the National Criminal Code, international developments, procedural and moral issues, and comparison of the findings with previous studies. This structure is intended to move the analysis from the national legal foundation toward a broader evaluation of the function of capital punishment in modern criminal law. The structure also separates historical discussion, state policy, procedural issues, and moral considerations so that the relationship among the sections is clearer.

¹⁴ William A. Schabas, *The Abolition of the Death Penalty in International Law*, 3rd ed. (Cambridge: Cambridge University Press, 2002).

¹⁵ Tongat, Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives, *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 2024): 90-104

¹⁶ Naufal Al Farisy and Mitro Subroto, "Relevansi Hukuman Mati Terhadap Perspektif Hak Asasi Manusia", *Jurnal Hukum Positum* 6, No. 1 (2021): 137-150

¹⁷ Gisella Tiara Cahyani et al., "Hukum Pidana Mati di Indonesia Berdasarkan Perspektif Hak Asasi Manusia dan Alternatif Penegakan Hukum", *Al-Qisth Law Review* 7, no. 1 (2023): 167-184.

¹⁸ Muhammad Andy Hakim and Joko Setiyono, "Indonesian Death Penalty: Seen from the Concept Based on Human Rights", *Diponegoro Law Review* 5, no. 2, (2020): p. 188-199.

B. RESEARCH METHOD

This study employs a normative-juridical method,¹⁹ conceptualizing the subject matter beyond mere statutory provisions to encompass the norms that serve as benchmarks for appropriate human conduct.²⁰ It applies statutory and conceptual approaches to evaluate sentencing theories,²¹ the right to life, and the finality of the death penalty; a historical approach to trace the evolution of capital punishment since the colonial era; a comparative approach to examine trends in other countries; and a human rights approach to assess fair trial guarantees and limitations regarding the death penalty. The analysis aims to identify changes in the legal status of the death penalty, critical aspects of its implementation, and its implications for the development of Indonesian criminal law. The judicial decision analyzed specifically is Constitutional Court Decision Number 2-3/PUU-V/2007 concerning the constitutional review of the death penalty under the Narcotics Law, because the decision contains important considerations on the relationship between the right to life, limitations on rights, and death penalty policy in Indonesia.

C. RESULTS AND DISCUSSION

1. The Existence of the Death Penalty and Changes in Its Position in Indonesian Law

The death penalty in Indonesia has a long legal foundation and has undergone conceptual change. Under the former criminal law, capital punishment was classified as one of the principal punishments and was prescribed for a number of serious crimes. Its regulation later expanded through statutes outside the Criminal Code, including narcotics offenses, terrorism, and certain other criminal offenses. The existence of the death penalty places Indonesia among states that retain capital punishment in national law, although its application has consistently been debated in relation to constitutionality, the purposes of punishment, and human rights.²² Differences of opinion among scholars can be seen, among others, in the thought of Andi Hamzah, who regarded the death penalty as a sanction that could be retained for offenders considered extremely dangerous to society, provided that its application remains within a lawful framework and a legitimate judicial process.²³ This view represents a retentionist argument emphasizing public protection, while abolitionist criticism emphasizes the right to life, the risk of wrongful

¹⁹ Anis Mashdurohatun et al., Reconstruction of Pornography Criminal Regulations Based on Pancasila Justice Values, *Jurnal Pembaharuan Hukum*, Vol. 11 No. 3 October 2024, p.587-604, DOI: <https://doi.org/10.26532/jph.v11i3.44504>.

²⁰ Anis Mashdurohatun, etc, *Metode Penelitian Hukum*, (Depok: Rajawali Pers, 2024): 63

²¹ Habibul Rakhman, A Legal Review of Criminal Procedural Law Regarding the Complexity of Proving the Element of Ecological Loss in Court Proceedings, *Journal Critical Legal System (JCLS)* 1, Issue. 2 (April 2026): 124-140

²² La Sina, Implementation of the Death Penalty in the Perspective of Human Rights in Indonesia, *Hasanuddin Law Review* 2, no. 3 (2016): 385-397.

²³ Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia*, (Jakarta: Pradnya Paramita, 1993): 35

conviction, and the irreversibility of execution. In all circumstances, the death penalty may only be implemented after there is a court judgment with permanent legal force (*inkracht van gewijsde*), making the finality of the judgment an important element in the procedural discussion of capital punishment.²⁴

The most significant reform occurred through Law Number 1 of 2023 concerning the Criminal Code, which entered into force on 2 January 2026.²⁵ Article 98 provides that the death penalty is prescribed alternatively as a last resort to prevent criminal offenses and protect society.²⁶ This formulation indicates a shift in the position of capital punishment from an ordinary principal punishment toward a special punishment with a restricted function. Following the enactment of Law Number 1 of 2026 concerning Criminal Sentencing Adjustments, Articles 99 through 101 were further harmonized.²⁷ Article 100 provides that a judge imposes the death penalty with a ten-year probationary period; during that period, the death penalty cannot be carried out, and if the convicted person demonstrates commendable attitudes and conduct, the sentence is commuted to life imprisonment through a Presidential Decision after consideration by the Supreme Court.²⁸

These changes are significant for the direction of sentencing policy. Current positive law continues to retain the death penalty while simultaneously providing a period in which the convicted person may be evaluated. This pattern introduces the idea of individualized sentencing and assessment of the offender's behavioral development into death penalty policy. Majda El Muhtaj describes the commutation model under the Criminal Code as part of a transitional policy that allows sentence modification based on evaluation during the probationary period. Accordingly, the existence of the death penalty in Indonesia in 2026 cannot be analyzed solely through the framework of the former Criminal Code because its legal basis has shifted substantially.²⁹ This model requires the death penalty to be understood as a policy containing stages of evaluation, rather than as a sanction that automatically ends in

²⁴ Muhammad Ansari, Re-Explaining the Urgency of the Death Penalty in Realizing a Deterrent Effect in Cases of Premeditated Murder, *Jurnal Daulat Hukum* 7, no. 4 (December 2024): 380-390.

²⁵ Primerta Putri Hapsari, Ali Masyhar, dan Cahya Wulandari, "The Conditional Death Penalty in Indonesia's New Criminal Code: Between Criminal Law Reform and Non-Derogable Rights", *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 26, no. 2 (2026): 2246-2271.

²⁶ Amiratul Mardhiyah Putri, Evi Deliana HZ, and Syaifullah Yophi Ardiyanto, "Conditional Death Penalty Policy under Law Number 1 of 2023 on the Criminal Code: A Legal Certainty Perspective", *Jurnal Ilmiah Advokasi* 13, no. 2 (2025): 581-596.

²⁷ Ari Susanto, Sukama, and Odi Jarodi, Pidana Mati Menurut Perspektif Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP, *Journal of Correctional Studies* 1, no. 1 (January 2024): 84-91.

²⁸ M. Irsyad Haryanto and Joko Setiyono, Conditional Death Penalty Policy in the New Criminal Code: An Analysis of the 10-Year Probation Period from the Perspective of International Human Rights, *International Journal of Law* 12, no. 2 (2026): 317-321.

²⁹ Majda El Muhtaj, "Komutasi Hukuman Mati dalam KUHP 2023: Sebuah Perspektif Hukum Hak Asasi Manusia", *Unimed Law Review* 1, No. 1 (2026): 1-31.

execution.³⁰

This shift also responds to some criticism concerning the absolute character of capital punishment. The probationary arrangement allows the state to assess the development of the convicted person before an execution may be carried out. Nevertheless, the finality of execution remains unchanged once the death penalty is ultimately implemented. Therefore, the probationary period must be accompanied by transparent assessment procedures, access to legal assistance, certainty regarding the standards for commendable attitudes and conduct, and coordination among the institutions involved. Without clear procedures, the objective of individualized sentencing risks producing inconsistent assessments across cases. Clarity of standards is also important so that the probationary mechanism does not reduce legal certainty for convicted persons, victims' families, and law enforcement officials.³¹

2. The Death Penalty in the Development of Modern Criminal Law and the Human Rights Perspective

Historically, the death penalty was once carried out publicly through methods that reflected the structure of power of the relevant era. In pre-modern Europe, punishments such as beheading, burning, and hanging were used for offenses against rulers, religion, and crimes regarded as extremely serious. The authority to impose punishment was closely associated with kings, military rulers, religious leaders, or judges acting under the authority of the sovereign. The development of the rule of law later changed the basis for punishment because the power to punish had to be subject to written law, judicial process, and procedural guarantees.³² An early example can be found in the Code of Hammurabi in Babylonia around the eighteenth century BCE, which prescribed the death penalty for a number of offenses and illustrates that from an early stage such punishment was connected to the power structure and social stratification of its time.³³ This example is used as historical context, not as a justification for the practice of capital punishment in contemporary legal systems.³⁴

The shift from public executions toward more regulated legal procedures reflects changes in societal views concerning human dignity, the legitimacy of state power, and the purposes of punishment. Capital punishment was no longer seen merely as a manifestation of sovereign

³⁰ Tony Andri Dwi Ermawan, Ira Alia Maerani, and Achmad Sulchan, Application of Double Track System Model Against Applicants of Narcotics Abuse, *Law Development Journal* 4, no. 1 (March 2022): 133-141

³¹ Andri Winjaya Laksana et al., Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity, *Yuridika* 40, no. 2 (May 2025): 253-270

³² Cesare Beccaria, *On Crimes and Punishments*, trans. Graeme R. Newman dan Pietro Marongiu (New Brunswick: Transaction Publishers, 2009): 49-55.

³³ Abdul Jalil Salam and Zahlul Pasha Karim, "Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist", *Lentera Hukum* 8, no. 1 (2021): 115-150.

³⁴ Tongat, Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives, *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 2024): 90-104

power, but as an act of the state that must be accountable through judicial process. Beccaria's thought had a major influence because he rejected the use of the death penalty as state retribution and argued that punishment should be assessed according to necessity, proportionality, and social utility. These developments were later connected to the emergence of modern theories of punishment that focus on prevention, rehabilitation, public protection, and the reintegration of offenders.³⁵ Beccaria was an eighteenth-century Italian Enlightenment thinker who, through *On Crimes and Punishments*, criticized torture and the death penalty because he considered them unnecessary and inconsistent with a rational approach to punishment.³⁶ His criticism became one of the intellectual milestones in limiting the power to punish and continues to influence contemporary discussion of proportionality and crime prevention.³⁷

In the development of Indonesian criminal law thought, J.E. Sahetapy also paid attention to the movement to abolish the death penalty and situated it within changing societal views on humanity and the possibility of judicial error.³⁸ He noted that the abolitionist movement developed across countries, including the abolition of the death penalty in Michigan in 1847, Venezuela in 1863, and the Netherlands for ordinary crimes in 1870. These historical examples show that changes in death penalty policy occurred gradually and were influenced by each country's legal experience. This discussion also clarifies that abolition in comparative analysis refers to abolition from the criminal law of each respective country, rather than a uniform global abolition. Accordingly, these historical experiences serve as a comparison with Indonesia's choice, which to date continues to retain the death penalty in a form that has been made more conditional.³⁹

From a natural law perspective, the right to life is understood as a right inherent in human beings and not derived from a grant by the state. This view influences criticism of capital punishment because the state is regarded as lacking unlimited authority to end a person's life. In modern human rights law, this idea has taken positive legal form through constitutions and international instruments. However, international law has not established a universal prohibition of the death penalty for all states. The ICCPR continues to recognize its existence in states that have

³⁵ Laura Zavatta, "Controversial Theories on the Death Penalty", *Beijing Law Review* 8, no. 2 (2017): 212-225.

³⁶ Cesare Beccaria, *On Crimes and Punishments*, trans. Graeme R. Newman dan Pietro Marongiu (New Brunswick: Transaction Publishers, 2009), p. 49-55.

³⁷ Daffa Ihsan Ghifari and Rakhmat Bowo Suharto, Searches in the Indonesian Criminal Procedure System Based on Human Rights Perspective, *Jurnal Daulat Hukum* 9, no. 2 (June 2026): 515-527, DOI: <https://doi.org/10.30659/jdh.v9i2.53454>.

³⁸ J. E. Sahetapy, *Suatu Situasi Khusus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana* (Jakarta: Rajawali, 1982): 347.

³⁹ Yudi Alvisahrin, Eko Soponyono, and Umar Ma'ruf, The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law, *Law Development Journal* 4, no. 1 (March 2022): 170-181, DOI: <https://doi.org/10.30659/ldj.4.1.170-181>.

not abolished it, subject to strict limitations. The debate has therefore moved toward the scope of the phrase “most serious crimes,” the prohibition of the death penalty for children and pregnant women, and the obligation to ensure a fair trial.⁴⁰ Thus, natural law provides a philosophical basis for criticism of the state's legitimacy to deprive a person of the right to life, while positive law determines the operational limits applicable to retentionist states.

The purposes of punishment in modern law have also reduced the dominance of absolute retributive theory. Muladi situates punishment within the relationship between offender accountability, public protection, and the social purposes of criminal law. This development can be seen in the National Criminal Code, which sets out broader purposes of punishment and places the death penalty as an alternative sanction. Within this framework, capital punishment exists in tension between the need to protect society from extremely serious crimes and the idea that punishment should leave room for behavioral change by the convicted person.⁴¹ The probationary period in the National Criminal Code demonstrates that public protection and evaluation of the convicted person are now placed within the same sentencing framework.⁴²

The death penalty, as part of the criminal justice system, reflects a state policy choice and may change alongside developments in legal policy. The Dutch experience shows that changes in state policy can lead to the abolition of capital punishment from criminal law. This history is connected to Indonesia because Dutch colonial criminal law once formed the basis of national criminal codification before the enactment of the National Criminal Code. The colonial legacy explains the historical origins of certain provisions, while the development of Indonesian law after independence shows a process of national policy formation increasingly influenced by the 1945 Constitution, Pancasila, the need for public protection, and human rights dynamics. This colonial influence does not determine Indonesian policy absolutely, but it explains why the death penalty formed part of the early structure of national criminal law and later had to be reassessed through Indonesia's own legal policy.⁴³

At the international level, the long-term trend shows a growing number of states abolishing the death penalty in law or in practice. Amnesty International recorded that by the end of 2025, 113 countries had abolished the death penalty for all crimes and 145 countries had

⁴⁰ William A. Schabas, *The Abolition of the Death Penalty in International Law*, 3rd ed. (Cambridge: Cambridge University Press, 2002): 67-92.

⁴¹ Muladi, *Proyeksi Hukum Pidana Material Indonesia di Masa Datang* (Semarang: Pidato Pengukuhan Guru Besar, 1990): 31.

⁴² Andri Winjaya Laksana, Denny Suwondo, and Siti Fatimah, The Analysis of Criminal Sanctions Effectiveness in Drug Law: Between Prevention and Rehabilitation, *Jurnal Pembaharuan Hukum* 13, no. 1 (March 2026): 52-70

⁴³ Yudi Alvisahrin, Eko Soponyono, and Umar Ma'ruf, The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law, *Law Development Journal* 4, no. 1 (March 2022): 170-181

abolished it in law or practice, while 54 countries continued to retain it.⁴⁴ These data indicate a global trend toward restriction and abolition, although executions remain high in a number of countries. In 2025, Amnesty International recorded at least 2,707 executions in 17 countries, with the largest numbers occurring in China where the data are not publicly available Iran, Saudi Arabia, Yemen, and the United States.⁴⁵ Accordingly, global indicators must be read through two different sets of data: the number of states that have abolished the death penalty and the number of executions that continue to take place in retentionist states.⁴⁶

Data concerning Saudi Arabia must be placed in their proper context. The country does not reflect a movement toward abolition of the death penalty. Amnesty International instead recorded at least 356 executions in 2025, including many cases related to drug offenses. This example shows that the global trend toward abolition coexists with increased use of capital punishment in some countries. Therefore, analysis of international developments must distinguish the trend in the number of countries abolishing the death penalty from the trend in the annual number of executions.⁴⁷ These data also show that Saudi Arabia constitutes an important exception to the abolitionist trend, because the increase in executions in that country runs counter to the growing number of states abolishing the death penalty.

International standards also influence national policy through the formation of procedural and substantive limits. United Nations instruments emphasize that in retentionist states, the death penalty may only be imposed for the most serious crimes and through judicial proceedings that meet fair trial standards. A recent study in the Human Rights Law Review even discusses the emerging customary international law prohibition of the mandatory death penalty because an automatically imposed sentence removes the possibility of assessing the defendant's individual circumstances. This direction is consistent with Indonesia's National Criminal Code, which does not place the death penalty as an automatic sanction and provides a probationary period.⁴⁸ For Indonesia, this influence appears primarily as standards of restriction and procedural guarantees because Indonesia has not become an abolitionist state and remains bound by ICCPR obligations concerning the right to life and a fair trial.

Constitutional comparison across Asia also shows that courts and

⁴⁴ Amnesty International, "Death Penalty in 2025: Facts and Figures", (18 May 2026)

⁴⁵ Amnesty International, *Death Sentences and Executions 2025* (London: Amnesty International, 2026): 39.

⁴⁶ M. Irsyad Haryanto and Joko Setiyono, Conditional Death Penalty Policy in the New Criminal Code: An Analysis of the 10-Year Probation Period from the Perspective of International Human Rights, *International Journal of Law* 12, no. 2 (2026): 317-321.

⁴⁷ Amnesty International, *Saudi Arabia: If We Had Money and a Lawyer, Maybe My Brother Would Be Alive: Saudi Arabia's Execution Crisis* (London: Amnesty International, 2025).

⁴⁸ Li-Yen Peng, "The Customary Prohibition of the Mandatory Death Penalty in International Law", *Human Rights Law Review* 26, no. 1 (2026)

legislatures use diverse approaches to the right to life and the death penalty. Jimmy Chia-Shin Hsu identifies transnational judicial dialogue concerning the relationship between the right to life and capital punishment, with variations among states that abolish, suspend, or retain the death penalty. This confirms that changes in death penalty policy are determined not only by constitutional text, but also by judicial interpretation, the history of legal policy, and the form of human rights protection in each state.⁴⁹ These differences demonstrate that comparative law is used to understand variations in approach, not to assume that a single national model can be transferred directly to Indonesia. Indonesia's position must therefore be assessed through its Constitution, the National Criminal Code, judicial decisions, and the international obligations binding upon it.

The most serious problem with capital punishment is its irreversibility once an execution has been carried out. Every justice system has the possibility of error arising from eyewitness identification, flawed forensic evidence, false confessions, the quality of defense, procedural violations, or erroneous assessment of evidence. In cases of imprisonment, an erroneous judgment may still allow release and certain forms of remedy after new evidence is discovered. In death penalty cases, correction after execution cannot restore the life of the convicted person. Therefore, the finality of capital punishment creates more serious moral and legal consequences than other forms of punishment.⁵⁰ The legal implication is the need to strengthen corrective mechanisms before execution, because successful legal remedies after execution cannot restore a right to life that has already been lost.⁵¹

The experience of the United States demonstrates the relevance of this risk. Since 1973, many people initially sentenced to death have later been released from death row following new evidence, re-examination of cases, or findings of procedural defects. Advances in DNA technology have also strengthened the capacity to review certain criminal judgments. These exoneration data do not mean that the entire death penalty system produces erroneous judgments, but they prove that wrongful conviction is a real risk that must be considered when the state uses an irreversible sanction.⁵² This experience provides comparative evidence that the finality of capital punishment requires a higher degree of caution than sanctions that still permit physical restoration of the convicted person.⁵³

⁴⁹ Jimmy Chia-Shin Hsu, "Right to Life and Capital Punishment in Transnational Judicial Dialogue", *Asian Journal of Comparative Law* 16, no. 2 (2021): 311-337.

⁵⁰ Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Cambridge, MA: Harvard University Press, 2011): 5-12.

⁵¹ Lan Chi Le et al., Wrongful Convictions in Asian Countries: A Systematic Literature Review, *International Journal of Comparative and Applied Criminal Justice* 48, no. 4 (2024): 345-361

⁵² Death Penalty Information Center, "Innocence: Database of Death Row Exonerations", accessed September 2026.

⁵³ Lan Chi Le et al., Wrongful Convictions in Asian Countries: A Systematic Literature Review, *International Journal of Comparative and Applied Criminal Justice* 48, no. 4 (2024): 345-361

The quality of a fair trial constitutes a particularly important layer of protection. Defendants facing the death penalty require competent legal counsel, sufficient time and facilities to prepare a defense, access to experts, the ability to challenge evidence, the right to appeal, and mechanisms for clemency. International reports show that in 2025 the death penalty in several countries was imposed through proceedings that did not meet fair trial standards, including the use of confessions allegedly obtained through torture or ill-treatment. This problem is closely connected to economic inequality because the ability to obtain high-quality defense often depends on access to legal resources.⁵⁴ In the Indonesian context, an OHCHR report concerning cases involving exposure to the death penalty records problems such as the absence of legal counsel at crucial stages, alleged ill-treatment to obtain confessions, prolonged pretrial detention, and inadequate legal assistance at the stage of legal remedies.⁵⁵ These findings show that fair trial guarantees are directly related to protection of the right to life because a death sentence resulting from a defective process produces consequences that cannot be remedied.

These disparities also have broader social consequences. Research on the death penalty shows that poor and minority groups may face greater barriers to obtaining equal defense, particularly in cases requiring forensic experts, independent investigation, and lengthy litigation. Therefore, procedural justice in death penalty cases requires state support for high-quality legal aid and oversight of the quality of judicial proceedings. Assessing capital punishment solely on the gravity of the offense without examining the quality of the process may disregard factors that determine whether the judgment was genuinely produced through a fair procedure. Literature concerning the families of death row prisoners also shows psychological burdens, stigma, uncertainty, and social pressure experienced by families during the lengthy process leading toward a possible execution, thereby extending the impact of the death penalty beyond the convicted person.⁵⁶ These impacts strengthen the argument that the quality of defense must be assessed as part of procedural protection in cases that may end in execution.

In addition to irreversibility, the effectiveness of the death penalty as a crime deterrent constitutes another basis of debate. The National Research Council concluded that the available research does not provide an adequate scientific basis for determining whether the death penalty decreases, increases, or has no effect on homicide rates. This finding is important because deterrence is frequently used as a principal

⁵⁴ Amnesty International, *Death Sentences and Executions 2025* (London: Amnesty International, 2026): 9-11.

⁵⁵ Office of the United Nations High Commissioner for Human Rights, *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (New York/Geneva: United Nations, 2015).

⁵⁶ Rachel King, *Capital Consequences: Families of the Condemned Tell Their Stories* (New Brunswick: Rutgers University Press, 2005).

justification for capital punishment. Criminal law may continue to consider the function of public protection, but claims concerning the superior deterrent effect of the death penalty must be limited to what can genuinely be supported by research evidence.⁵⁷ Consequently, policymakers must distinguish between normative beliefs regarding the severity of punishment and empirical evidence concerning the capacity of that sanction to reduce crime rates.⁵⁸

Comparative studies of Asia also show that the existence of the death penalty cannot be separated from political, social, and institutional-capacity factors. Zimring and Johnson show that death penalty policy in Asia has developed through diverse pathways and cannot be fully explained by crime rates alone. Therefore, evaluation of the effectiveness of capital punishment should include the context of the justice system, certainty of law enforcement, the probability of apprehension, the quality of investigation, and other crime prevention policies. The transition from the issue of wrongful conviction to deterrent effectiveness is important because the two test different justifications: procedural security and the social utility of the death penalty. They must be examined separately so that assessment of capital punishment does not conflate risks in the judicial process with claims regarding deterrence.⁵⁹

The next moral issue concerns the right to life as a fundamental right that limits state power. In human rights theory, the right to life places human life among the interests receiving the highest level of protection and permits limitations only within an exceptionally strict framework. An absolutist moral approach to the right to life rejects the death penalty because state-inflicted deprivation of life is considered unjustifiable regardless of the gravity of the crime, whereas a retentionist approach connects capital punishment with proportionate retribution and public protection. Positive international law has not established a universal prohibition applicable to all states, but the ICCPR limits the death penalty to the most serious crimes, requires a final judgment by a competent court, and guarantees the opportunity to seek pardon or commutation. The tension between these moral positions and positive law explains why the death penalty debate in modern law has moved toward restricted use, stronger procedural guarantees, and an abolitionist trend in many countries. These different moral foundations must be stated openly so that the analysis does not conflate arguments concerning the legitimacy of the penalty with the positive legal rules

⁵⁷ National Research Council, *Deterrence and the Death Penalty* (Washington, DC: National Academies Press, 2012): 2.

⁵⁸ Muhammad Raffly Putratama and Andri Winjaya Laksana, The Effectiveness of the Death Penalty as an Instrument of Legal Firmness Against Drug Dealers, *Jurnal Hukum Khaira Ummah* 20, no. 2 (June 2025): 709-728

⁵⁹ Andri Winjaya Laksana, Denny Suwondo, and Siti Fatimah, The Analysis of Criminal Sanctions Effectiveness in Drug Law: Between Prevention and Rehabilitation, *Jurnal Pembaharuan Hukum* 13, no. 1 (March 2026): 52-70.

currently in force.⁶⁰

The moral debate over the death penalty is connected to two major foundations. A retributive perspective assesses the severity of punishment through proportionality between culpability and the suffering caused by the crime. Within this framework, the death penalty may be viewed as a response to crimes involving an exceptionally high degree of culpability and consequence. A human rights perspective places the right to life, human dignity, and limits on state power at the center of the analysis. The tension between these two perspectives explains why capital punishment remains an issue that is difficult to resolve through a single theory of punishment. Scientific analysis must therefore distinguish moral arguments concerning the legitimacy of the sanction from empirical arguments concerning its effectiveness.⁶¹

Modern criminal law also places significant emphasis on individualized sentencing. Offenders are assessed not only by the type of offense, but also by their role, culpability, personal circumstances, consequences, possibility of behavioral change, and the objective of protecting society. This direction is reflected in Indonesia's conditional death penalty framework. The ten-year probationary period provides room to evaluate the conduct of the convicted person before the death penalty may be carried out. This model reduces the automatic character of capital punishment and links the judgment to subsequent evaluation of the convicted person. The study by Hapsari, Masyhar, and Wulandari assesses this change as a shift from an absolute death penalty toward a conditional model in Indonesian criminal law reform.⁶² Regulations regarding the death penalty vary across countries; under Somalia's legal framework, defendants sentenced to death have the right to challenge their convictions and sentences. Unfortunately, there are numerous documented cases in the country where defendants facing the death penalty were denied the opportunity to appeal to a higher court. While most courts across the country conduct capital trials publicly, the Somali government does not follow this practice. Consequently, this report lacks critical information regarding individuals on death row or capital cases in the region.⁶³ The Netherlands applies different regulations; as a member of the European Union and the Council of Europe, the country is bound by Protocols No. 6 and No. 13 of the ECHR, which prohibit the death penalty under all circumstances, including during wartime. This obligation renders the abolition of the death penalty in the Netherlands not merely a policy choice, but a requirement under international law. A violation of

⁶⁰ Tongat, Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives, *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 2024): 90-104

⁶¹ Anis Mashdurohatun et al., Reconstruction of Pornography Criminal Regulations Based on Pancasila Justice Values, *Jurnal Pembaharuan Hukum* 11, no. 3 (October 2024): 587-604

⁶² Primerta Putri Hapsari, Ali Masyhar, and Cahya Wulandari, "The Conditional Death Penalty in Indonesia's New Criminal Code: Between Criminal Law Reform and Non-Derogable Rights", *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 26, no. 2 (2026): 246-2271,

⁶³ Ahmed Kheir Osman, Abdishakur Ali, Courts Have Sentenced To 100 Individuals To Death And Cannibalistic Dog Exhibiting Dangerous Tendencies Was Euthanized, *KEPOKI*, (2024): 6

this obligation could entail serious legal consequences for the Netherlands before the European Court of Human Rights.⁶⁴

The findings of this study are consistent with the research of Hakim and Setiyono, who place Indonesia's death penalty in tension between positive law and human rights, and with La Sina regarding the importance of assessing capital punishment through guarantees of the right to life. This study extends those findings by considering legal developments after the National Criminal Code entered into force in 2026 and after the amendments introduced through Law Number 1 of 2026. The difference lies in the object of analysis: the current position of capital punishment is no longer the same as under the former Criminal Code because probation and commutation have become part of its normative structure. Accordingly, contemporary debate must address the quality of the evaluation mechanism during the probationary period, rather than only the choice between retaining or abolishing the death penalty.⁶⁵ Compared with those earlier studies, the present research shows that the Indonesian debate after 2026 has shifted from the question of whether the death penalty exists toward the issue of how conditional mechanisms, commutation, and procedural protections are to be implemented consistently.⁶⁶

These findings also differ from views that simplify the death penalty as a preventive instrument that is automatically more effective than other severe punishments. The empirical literature has not consistently supported that claim. At the same time, the findings do not disregard the interests of victims and the protection of society because both remain elements of the purposes of punishment. The position emerging from recent Indonesian legal developments is the restriction of the death penalty through its special status, alternative formulation, probationary period, and the possibility of commutation to life imprisonment. This direction reflects a form of normative compromise within national criminal policy.⁶⁷

The theoretical implication of this study lies in changing the way capital punishment is situated within Indonesian sentencing theory. The death penalty can no longer be appropriately understood as a form of absolute retribution. The existence of a probationary period connects it

⁶⁴ Tony Andri Dwi Ermawan, Ira Alia Maerani, and Achmad Sulchan, Application of Double Track System Model Against Applicants of Narcotics Abuse, *Law Development Journal* 4, no. 1 (March 2022): 133-141

⁶⁵ Muhammad Andy Hakim and Joko Setiyono, "Indonesian Death Penalty: Seen from the Concept Based on Human Rights", *Diponegoro Law Review* 5, no. 2 (2020): 188-199. La Sina, "Implementation of the Death Penalty in the Perspective of Human Rights in Indonesia", *Hasanuddin Law Review* 2, no. 3 (2016): 385-397.

⁶⁶ M. Irsyad Haryanto and Joko Setiyono, Conditional Death Penalty Policy in the New Criminal Code: An Analysis of the 10-Year Probation Period from the Perspective of International Human Rights, *International Journal of Law* 12, no. 2 (2026): 317-321.

⁶⁷ Muhammad Rafly Putratama and Andri Winjaya Laksana, The Effectiveness of the Death Penalty as an Instrument of Legal Firmness Against Drug Dealers, *Jurnal Hukum Khaira Ummah*, 20 no. 2, (June 2025): 709-728.

with the ideas of individualization, behavioral evaluation, public protection, and the possibility of sentence modification. In practical terms, this change requires clear guidelines concerning the evaluation of commendable attitudes and conduct, the quality of legal assistance, records of the convicted person's development, consideration by the Supreme Court, Presidential decisions, and the relationship of this mechanism with clemency. Such standards are required so that the probationary period has a legal function that can be applied consistently. This framework can be used to understand the death penalty as a special punishment whose continuation depends on normative and administrative evaluation after judgment.⁶⁸

Another implication concerns protection against wrongful conviction. Because execution is final, death penalty cases require exceptionally careful evidentiary and adjudicative standards, full access to competent legal assistance, examination of forensic evidence, opportunities for judicial review when new evidence emerges, and transparency in clemency mechanisms. Strengthening these aspects has direct significance for procedural justice. At the same time, future research should assess implementation of the ten-year probationary period after a sufficient number of judgments under the National Criminal Code become available, including the consistency of indicators of commendable conduct, differences across cases, and their impact on legal certainty for convicted persons and victims' families. The policy recommendation arising from these findings is the formulation of auditable inter-agency guidelines for evaluating the probationary period, ensuring effective legal assistance, and postponing execution when relevant legal proceedings remain pending.

D. CONCLUSION

The death penalty remains part of Indonesian criminal law, but its position has changed significantly following the entry into force of Law Number 1 of 2023 concerning the Criminal Code and the adjustments introduced through Law Number 1 of 2026. Capital punishment is positioned as a special penalty prescribed alternatively, and its implementation is linked to a ten-year probationary period. The principal finding of this study is that this model reflects a shift from an orientation of absolute retribution toward a policy that incorporates public protection, individualized sentencing, evaluation of the convicted person's conduct, and the possibility of commutation to life imprisonment. Nevertheless, the irreversibility of execution, the risk of wrongful conviction, the quality of legal assistance, inequality in access to defense, and the unproven superiority of the death penalty's deterrent effect remain important reasons for tightening the procedures governing its application. Theoretically, this change reinforces the understanding that capital punishment in national law now operates within a conditional sentencing framework; in practical terms, measurable

⁶⁸ Andri Winjaya Laksana et al., Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity, *Yuridika* 40, no. 2 (May 2025): 253-270

guidelines are required for probationary evaluation, fair trial guarantees, commutation mechanisms, and access to legal remedies. Future research should examine the application of Articles 99 through 101 of the Criminal Code in judgments issued after 2 January 2026, particularly the consistency of assessments of convicted persons' conduct and their impact on legal certainty and the protection of the rights of the parties.

BIBLIOGRAPHY

Books:

- Amnesty International. *Death Penalty in 2025: Facts and Figures*. 18 May 2026.
- Amnesty International. *Death Sentences and Executions 2025*. London: Amnesty International, 2026.
- Amnesty International. *Saudi Arabia: If We Had Money and a Lawyer, Maybe My Brother Would Be Alive: Saudi Arabia's Execution Crisis*. London: Amnesty International, 2025.
- Beccaria, Cesare. *On Crimes and Punishments*. Diterjemahkan oleh Graeme R. Newman dan Pietro Marongiu. New Brunswick: Transaction Publishers, 2009.
- Garrett, Brandon L. *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*. Cambridge, MA: Harvard University Press, 2011.
- Hamzah, Andi. *Sistem Pidana dan Pemidanaan Indonesia*. Jakarta: Pradnya Paramita, 1993.
- Johnson, David T., dan Franklin E. Zimring. *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*. Oxford: Oxford University Press, 2009.
- King, Rachel. *Capital Consequences: Families of the Condemned Tell Their Stories*. New Brunswick: Rutgers University Press, 2005.
- Mashdurohatun, Anis, et al. *Metode Penelitian Hukum*. Depok: Rajawali Pers, 2024.
- Muladi. *Proyeksi Hukum Pidana Material Indonesia di Masa Datang*. Semarang: Pidato Pengukuhan Guru Besar, 1990.
- National Research Council. *Deterrence and the Death Penalty*. Washington, DC: National Academies Press, 2012.
- Office of the United Nations High Commissioner for Human Rights. *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*. New York/Geneva: United Nations, 2015.
- Osman, Ahmed Kheir, dan Abdishakur Ali. *Courts Have Sentenced to 100 Individuals to Death and Cannibalistic Dog Exhibiting Dangerous Tendencies Was Euthanized*. KEPOKI, 2024.

Sahetapy, J. E. *Suatu Situasi Khusus Mengenai Ancaman Pidana Mati Terhadap Pembunuhan Berencana*. Jakarta: Rajawali, 1982.

Schabas, William A. *The Abolition of the Death Penalty in International Law*. 3rd ed. Cambridge: Cambridge University Press, 2002.

Wicks, Elizabeth. *The Right to Life and Conflicting Interests*. Oxford: Oxford University Press, 2010.

Journals:

Al Farisy, Naufal, dan Mitro Subroto. "Relevansi Hukuman Mati Terhadap Perspektif Hak Asasi Manusia." *Jurnal Hukum Positum* 6, no. 1 (2021). DOI: 10.35706/positum.v6i1.5610.

Alvisahrin, Yudi, Eko Soponyono, dan Umar Ma'ruf. "The Criminal Law Policy Regarding the Death Penalty in Renewing of Indonesian Criminal Law." *Law Development Journal* 4, no. 1 (March 2022).

Ansari, Muhammad. "Re-Explaining the Urgency of the Death Penalty in Realizing a Deterrent Effect in Cases of Premeditated Murder." *Jurnal Daulat Hukum* 7, no. 4 (December 2024).

Cahyani, Gisella Tiara, et al. "Hukum Pidana Mati di Indonesia Berdasarkan Perspektif Hak Asasi Manusia dan Alternatif Penegakan Hukum." *Al-Qisth Law Review* 7, no. 1 (2023).

Ermawan, Tony Andri Dwi, Ira Alia Maerani, dan Achmad Sulchan. "Application of Double Track System Model Against Applicants of Narcotics Abuse." *Law Development Journal* 4, no. 1 (March 2022).

Ghifari, Daffa Ihsan, dan Rakhmat Bowo Suharto. "Searches in the Indonesian Criminal Procedure System Based on Human Rights Perspective." *Jurnal Daulat Hukum* 9, no. 2 (June 2026).

Hakim, Muhammad Andy, dan Joko Setiyono. "Indonesian Death Penalty: Seen from the Concept Based on Human Rights." *Diponegoro Law Review* 5, no. 2 (2020).

Hapsari, Primerta Putri, Ali Masyhar, dan Cahya Wulandari. "The Conditional Death Penalty in Indonesia's New Criminal Code: Between Criminal Law Reform and Non-Derogable Rights." *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 26, no. 2 (2026).

Haryanto, M. Irsyad, dan Joko Setiyono. "Conditional Death Penalty Policy in the New Criminal Code: An Analysis of the 10-Year Probation Period from the Perspective of International Human Rights." *International Journal of Law* 12, no. 2 (2026).

Hsu, Jimmy Chia-Shin. "Right to Life and Capital Punishment in Transnational Judicial Dialogue." *Asian Journal of Comparative Law* 16, no. 2, (2021)

Laksana, Andri Winjaya, Denny Suwondo, dan Siti Fatimah. "The Analysis of Criminal Sanctions Effectiveness in Drug Law: Between Prevention and Rehabilitation." *Jurnal Pembaharuan Hukum* 13, no. 1 (March 2026).

- Laksana, Andri Winjaya, et al. "Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity." *Yuridika* 40, no. 2 (May 2025).
- Le, Lan Chi, et al. "Wrongful Convictions in Asian Countries: A Systematic Literature Review." *International Journal of Comparative and Applied Criminal Justice* 48, no. 4 (2024).
- Mashdurohatun, Anis, et al. "Reconstruction of Pornography Criminal Regulations Based on Pancasila Justice Values." *Jurnal Pembaharuan Hukum* 11, no. 3 (October 2024).
- Mas, Felix Eka Firtin Smit Kandun, et al. "Hukuman Mati dalam Perspektif Pidana dan HAM." *Referendum: Jurnal Hukum Perdata dan Pidana* 1, no. 4 (Desember 2024).
- Muhtaj, Majda El. "Komutasi Hukuman Mati dalam KUHP 2023: Sebuah Perspektif Hukum Hak Asasi Manusia." *Unimed Law Review* 1, no. 1 (2026).
- Peng, Li-Yen. "The Customary Prohibition of the Mandatory Death Penalty in International Law." *Human Rights Law Review* 26, no. 1 (2026).
- Putratama, Muhammad Rafly, dan Andri Winjaya Laksana. "The Effectiveness of the Death Penalty as an Instrument of Legal Firmness Against Drug Dealers." *Jurnal Hukum Khaira Ummah* 20, no. 2 (June 2025).
- Putri, Amiratul Mardhiyah, Evi Deliana HZ, dan Syaifullah Yophi Ardiyanto. "Conditional Death Penalty Policy under Law Number 1 of 2023 on the Criminal Code: A Legal Certainty Perspective." *Jurnal Ilmiah Advokasi* 13, no. 2 (2025).
- Rakhman, Habibul. "A Legal Review of Criminal Procedural Law Regarding the Complexity of Proving the Element of Ecological Loss in Court Proceedings." *Journal Critical Legal System (JCLS)* 1, no. 2 (April 2026).
- Rimbawan, Andhika Yuli. "Harmonization of Judicial Decisions: Analysis of Compliance with Jurisprudence and Application of the Principle of Legality in Special Criminal Cases." *Journal Critical Legal System (JCLS)* 1, no. 1 (April 2026).
- Salam, Abdul Jalil, dan Zahlul Pasha Karim. "Death Penalty in Indonesia: Revisiting the Debate Between the Retentionist and the Abolitionist." *Lentera Hukum* 8, no. 1 (2021).
- Sina, La. "Implementation of the Death Penalty in the Perspective of Human Rights in Indonesia." *Hasanuddin Law Review* 2, no. 3 (2016).
- Susanto, Ari, Sukama, dan Odi Jarodi. "Pidana Mati Menurut Perspektif Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP." *Journal of Correctional Studies* 1, no. 1 (January 2024).
- Tongat. "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives." *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 2024).

Zavatta, Laura. "Controversial Theories on the Death Penalty." *Beijing Law Review* 8, no. 2 (2017).

Internet Source:

Death Penalty Information Center. "Innocence: Database of Death Row Exonerations." Diakses September 2026.