



The Policy of Retaining the Death Penalty in the Reform of Indonesian Criminal Law: An Analysis of the Influencing Factors

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ABSTRACT

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The death penalty is one of the most controversial forms of criminal sanction within the criminal justice systems of various countries, including Indonesia. Amid the widespread discourse on abolishing the death penalty in the name of protecting human rights, Indonesia continues to retain the existence of capital punishment, both under the colonial-era Criminal Code (Wetboek van Strafrecht) and under the New Criminal Code enacted through Law Number 1 of 2023. This article aims to identify and analyze the factors that cause the death penalty to still be retained within the national criminal justice system. This study uses the normative legal research method with a statute approach and a conceptual approach, analyzed descriptively and analytically with respect to primary, secondary, and tertiary legal materials. The findings show that the continued retention of the death penalty in Indonesia is influenced by five interrelated factors, namely juridical factors, legal-political factors, philosophical factors, sociological factors, and factors relating to community protection and crime prevention. These five factors show that Indonesia's death-penalty policy is compromistic in character: it continues to retain the death penalty as an instrument of community protection, but with restrictions and mechanisms that are more humane than those found under the former Criminal Code.

1. INTRODUCTION

The death penalty is one of the most severe types of criminal sanction and remains, to this day, one of the most widely debated issues in the field of criminal law, both nationally and internationally. This debate touches not only on juridical-normative aspects but also extends into philosophical, ethical, sociological, and human-rights dimensions. In many countries, the major trend in criminal-law reform leans toward abolishing, or at least strictly limiting, the use of the death penalty, in line with the growing number of countries positioning themselves as abolitionist, whether de jure or de facto. Amnesty International notes that the global trend toward abolishing the death penalty continues, even though the number of executions worldwide has in fact increased in recent years, including in Indonesia (Amnesty International Indonesia, 2026). This phenomenon confirms that death-penalty policy does not move linearly toward abolition but instead varies from country to country according to each country's own social, political, and legal-cultural context.

To this day, Indonesia continues to retain the death penalty as part of its national system of criminal sanctions, amid international pressure and opposition from civil-society organizations such as the Institute for Criminal Justice Reform (ICJR), which argues that lethal punishment is inconsistent with respect for the right to life and has not been proven effective in reducing crime rates (AdminICJR, 2025). The tension between this view and that of certain academics and policymakers, who consider that the wholesale abolition of the death penalty cannot yet be achieved given the complexity of extraordinary crimes such as narcotics offenses, terrorism, and large-scale corruption, places the death penalty as an unresolved human-rights dilemma within Indonesia's constitution and constitutional practice (Heltaji, 2022). Normatively, the transformation of death-penalty regulation from the *Wetboek van Strafrecht*, the colonial-era Criminal Code, to the New Criminal Code through Law Number 1 of 2023 shows a shift in the status of the death penalty from a principal punishment, as provided for in Article 10 of the former Criminal Code, to a special punishment that is always threatened as an alternative alongside life imprisonment or imprisonment for a fixed term, accompanied by a probationary death-penalty mechanism under Article 100 that allows for commutation to life imprisonment (Yudistira et al., 2025; Asyadiki & Novariyanto, 2024). This change is reinforced by Constitutional Court Decision Number 2-3/PUU-V/2007, which affirms that the death-penalty provisions in the Narcotics Law do not conflict with Article 28A and Article 28I(1) of the 1945 Constitution of the Republic of Indonesia (Constitutional Court of the Republic of Indonesia, 2007).

Previous studies on the death penalty in Indonesia have generally been partial and have focused on a single dimension. Some studies focus on a juridical-normative comparison between the regulation under the former and the New Criminal Code (Erlangga et al., 2025; Yudistira et al., 2025); others examine the ethical-philosophical dimension of the conditional death penalty under Article 100 (Pasalima et al., 2024); others examine the legal-political dynamics behind its formation (Prasetio et al., 2023); others examine public perception and acceptance through quantitative surveys (Idris & Laksito, 2024); and still others raise the human-rights perspective and the Islamic-law perspective underlying the movement to abolish the death penalty led by non-governmental organizations (Widiyanti & Rajab, 2023). These studies make important contributions, but tend to examine each factor separately, and few have constructed the interrelation and hierarchy among juridical, legal-political, philosophical, sociological, and community-protection factors within a single, integrated analytical framework following the enactment of the New Criminal Code. It is precisely this gap that constitutes the research gap, and at the same time the novelty, that this article seeks to fill.

Based on the foregoing, the problem examined in this article is what factors influence the continued application of the death penalty in Indonesia and how the interrelation among these factors shapes the pattern of death-penalty policy following the reform of the Criminal Code. Unlike a problem formulation that is merely descriptive-identificatory, the purpose of this article is to construct an analytical framework concerning the hierarchy and interconnection among these factors, while also affirming that the compromistic character of death-penalty

policy in the New Criminal Code is an analytical finding drawn from a comparison of normative structures, namely the shift from Article 10 of the former Criminal Code to Article 100 of the New Criminal Code, and not merely the authors' normative judgment on the debate between human rights and community protection. This article is therefore expected to make a theoretical contribution to the development of criminal-law scholarship, particularly on the issue of sentencing and contemporary criminal-law policy in Indonesia.

2. RESEARCH METHOD

This study uses the normative legal research method with a statute approach and a conceptual approach. The statute approach is used to trace the shift in the regulation of the death penalty from Article 10 of the former Criminal Code (*Wetboek van Strafrecht*) to Article 100 of Law Number 1 of 2023, while the conceptual approach is used to examine the rationality underlying that normative shift. Retributive theory and relative theory were chosen as the conceptual lens because both are the two principal schools of sentencing theory most frequently invoked in Indonesia's death-penalty legislative debates, and because they represent two distinct logics of justification, retribution for wrongdoing and prevention for social benefit, making them relevant for explaining why the state chooses to retain the death penalty rather than abolish it.

3. RESULTS AND DISCUSSION

The existence of the death penalty in Indonesia continues to be retained as one means of protecting the public from the threat of extraordinary crimes, such as the illicit trafficking of narcotics and terrorism, driven by the principle of retributive justice for victims and consistency with the moral, religious, and legal-cultural values that prevail within society (Martio et al., 2026). The findings of this study identify five interrelated factors that form a hierarchy: the juridical factor becomes the foundation of formal legitimacy, the legal-political factor becomes the state's strategic choice in responding to that foundation, while the philosophical, sociological, and community-protection factors function as the substantive justifications that reinforce that legal-political choice. Before these five factors are set out one by one, the following two subsections first present the context that underlies them, namely the dynamics of death-penalty regulation from the former Criminal Code to the New Criminal Code, and the map of the pro-and-con debate that accompanies it. This context is necessary so that the five factors are not read as a stand-alone list, but rather as a response to the normative upheaval and public discourse that has taken place. The five factors are then set out in sequence, together with an explanation of how they relate to one another.

3.1 The Dynamics of Death-Penalty Regulation from the Former Criminal Code to the New Criminal Code

The regulation of the death penalty in Indonesia did not originate from a single point in time, but is the result of a long series of developments rooted in the colonial-era *Wetboek van Strafrecht*. Under the former Criminal Code, the death penalty was placed as a principal punishment under Article 10, standing on equal footing with imprisonment, confinement, and

finest, while also being scattered across various special laws governing serious offenses such as narcotics, terrorism, and corruption (Kumala Dewi, 2020). A historical review of death-penalty regulation since 1946 shows that the state has repeatedly adjusted the formulation and scope of the death penalty in line with the demands of the times, without ever truly relinquishing this instrument from the national criminal-justice system (Balla & Saputra, 2024). This pattern of gradual adjustment ultimately resulted in a lengthy and inconsistent time frame for carrying out executions, as likewise highlighted in studies on the practical aspects of implementing the death penalty in Indonesia (Batu, 2023).

An important turning point occurred with the enactment of Law Number 1 of 2023 concerning the Criminal Code, which marked the end of the colonial Criminal Code's period of validity after more than a century (Ardiansyah et al., 2024). A systematic comparison between the two codes shows that the death penalty was not abolished, but rather had its status reconstructed from a principal punishment into a special, alternative punishment equipped with a probationary mechanism under Article 100 (Chofifa et al., 2024). This shift also continued following the enactment of the new code of criminal procedure, which likewise restructured the procedural aspects of carrying out the death penalty (Ramazi & Ilham, 2026). It is precisely this regulatory dynamic that provides the backdrop for this article's fundamental question: what factors cause the state to continue retaining the death penalty amid such a lengthy process of criminal-law reform.

3.2 The Pro-and-Con Debate on the Death Penalty in Contemporary Criminal-Law Discourse

The dynamics of death-penalty regulation cannot be separated from the ongoing pro-and-con debate within contemporary criminal-law discourse. Those who support retaining the death penalty generally emphasize its function in protecting the community and satisfying victims' sense of justice, as reflected in studies on the application of the death penalty to narcotics offenses, which are regarded as a serious and widespread threat (Firmansyah & Sitorus, 2023). This argument generally rests on sentencing objectives oriented toward both prevention and retribution at once, as set out in studies on the threat of the death penalty from the perspective of sentencing objectives (Muhammad, 2023; Ramadhan & Ariyanti, 2023).

Conversely, those who oppose the death penalty base their view primarily on the human-rights perspective, arguing that the application of the death penalty has the potential to conflict with the right to life as a fundamental right protected by the constitution (Siburian & Sipayung, 2023). This map of pro-and-con positions is further sharpened by studies that specifically map the arguments of both sides in the enforcement of death-penalty law in Indonesia, which show that this tension has not yet found a single point of convergence and tends to be resolved on a case-by-case basis by the legislature (Safarina et al., 2025). It is precisely this pro-con tension that forms the discursive backdrop for the five factors discussed in the following subsection, while also explaining why the policy born of the Criminal Code reform tends to be compromistic rather than decisively siding with either pole.

Building on this regulatory dynamic and this map of debate, the following section sets out the five factors that explain why the death penalty continues to be retained in the reform of Indonesian criminal law, beginning with the juridical factor as the foundation of formal legitimacy, followed by the legal-political factor as the state's strategic choice, and concluding with the philosophical, sociological, and community-protection factors that constitute its substantive justification.

3.3 Juridical Factors

The first factor underlying the retention of the death penalty in Indonesia is the juridical factor, namely the existence of constitutional and legislative legitimacy for the death penalty itself. The former Criminal Code placed the death penalty as one of the principal punishments under Article 10, on equal footing with imprisonment, confinement, and fines, while also being scattered across various special laws governing serious offenses such as narcotics, terrorism, and corruption (Kumala Dewi, 2020; Ardiansyah et al., 2024). Under the New Criminal Code, this status underwent a philosophical-normative shift into a special punishment that is always threatened as an alternative alongside life imprisonment or imprisonment for a fixed term, through the conditional death-penalty mechanism under Article 100 (Yudistira et al., 2025). This shift does not amount to an abolition of the juridical basis of the death penalty, but rather a restructuring of its normative construction (Asyadiki & Novariyanto, 2024). This juridical legitimacy is further reinforced by Constitutional Court Decision Number 2-3/PUU-V/2007, which affirms that the death-penalty provisions in the Narcotics Law do not conflict with Article 28A and Article 28I(1) of the 1945 Constitution, because the right to life is not an absolute right free of any limitation (Baiti, 2024).

The consistency of death-penalty regulation across various special laws (*lex specialis*) confirms that the reform of national criminal law was not intended to abolish the existence of the death penalty, but rather to restructure the mechanism of its imposition so as to be more consistent with the principle of legal certainty (Faisal & Rustamaji, 2021). The juridical factor therefore provides a solid formal foundation for the continuity of the death penalty, but this foundation is merely enabling in nature and does not yet explain why the state chooses to continue using it, a question answered by the legal-political factor discussed in the following section.

3.4 Legal-Political Factors

The second factor is legal politics, namely the state's choice not to abolish the death penalty entirely, but instead to retain it subject to stricter limitations. A comparison between Article 10 of the former Criminal Code and Article 100 of the New Criminal Code shows a shift in orientation from a repressive sentencing system toward one that is more accommodating of humanitarian values, without abandoning the death penalty as a last resort (*ultimum remedium*) for crimes regarded as extremely serious (Prameswari, 2026; Ramadhani & Wijanarko, 2025). A historical review of death-penalty regulation from 1946 to 2023 shows that the state has gradually adjusted its death-penalty policy in line with the demands of the times, without ever truly abandoning this instrument (Balla & Saputra, 2024). This shift in orientation is the result

of legislative political tug-of-war during deliberation on the Criminal Code bill, between pressure from abolitionist groups demanding wholesale abolition and the position of the legislative majority and the government, who considered the death penalty still necessary as an instrument for repressing extraordinary crime (Faisal & Rustamaji, 2021). It is precisely this tug-of-war dynamic that ultimately determined the final form of the norm in Article 100.

3.5 Philosophical Factors

Philosophically, the retention of the death penalty cannot be separated from the influence of two principal schools of sentencing theory, namely absolute or retributive theory and relative or utilitarian theory. The retributive view regards the death penalty as a form of commensurate retribution for extraordinary crimes such as terrorism, large-scale corruption, and the illicit trafficking of narcotics, whereas the utilitarian view emphasizes the death penalty's usefulness as a means of deterrence and social protection (Simanjuntak, 2023). It is precisely this combination of retributive and preventive logic that philosophically underlies policymakers' argument for retaining the death penalty for crimes considered to undermine the very foundations of social life.

This philosophical foundation is clearly evident in the normative construction of the conditional death penalty under Article 100 of Law Number 1 of 2023, which reflects the legislature's effort to balance the aim of retribution with the aim of rehabilitation by providing room for the convict to demonstrate remorse and self-improvement (Pasalima et al., 2024). Although it appears coherent, this combination of retributive and utilitarian reasoning leaves behind a tension that is rarely questioned: retributive theory is backward-looking and assesses punishment on the basis of the commensurateness of the act, whereas utilitarian theory is forward-looking and requires evidence of future benefit, so that combining the two risks becoming an ad hoc justification applied selectively. This fragility is clearly apparent in the death penalty for corruptors, where a cost-benefit calculation shows a deterrent effect that is small compared to the substantial social and international-reputational costs borne by the state (Fariduddin & Tetono, 2022). The strength of this philosophical argument is therefore uneven: it is more robust for violent crimes such as narcotics offenses and terrorism, but weaker for economic crimes such as corruption, an unevenness that also helps explain the variation in social acceptance discussed under the sociological factor below.

3.6 Sociological Factors

The fourth factor is the sociological factor, namely the support and public opinion that, on the whole, still favors the application of the death penalty, particularly for crimes considered to undermine the foundations of social life, such as narcotics offenses and corruption. National survey data show that public acceptance of the death penalty in narcotics cases remains high, and that this acceptance correlates with the perception that a severe punishment is the most tangible form of justice felt by victims and their families (Idris & Laksito, 2024). A similar dynamic is also apparent in the debate over applying the death penalty to corruptors, where some segments of society support it as a response to the prevalence of mega-corruption, while

others consider its application not yet proportionate and potentially productive of injustice (Fadilah & Sutrisno, 2022).

This high level of support needs to be read critically. A national survey with a more rigorous methodology, using a stratified random sample conducted in cooperation with the Death Penalty Project, found that although 69% of respondents supported the death penalty, only 35% expressed strong support, and this figure fell to 25% when offered the alternative of life imprisonment without parole, and declined even more sharply when respondents were given details of mitigating circumstances in specific cases (Hoyle & Jabbar, 2021). Fewer than 5% of respondents even claimed to genuinely understand the issue, indicating that this support reflects an emotional reaction based on minimal information rather than a deeply entrenched attitude, so that its use as a sociological justification needs to be treated with appropriate caution.

On the other hand, this public acceptance stands in contrast to the critical views of civil-society organizations. Studies on the death-penalty abolition movement initiated by non-governmental institutions such as Imparsial show that opposition to the death penalty is based on arguments concerning human-rights violations and the absence of scientific evidence of any deterrent effect, while also offering an Islamic-law perspective that has an alternative sentencing mechanism (Widiyanti & Rajab, 2023). It is precisely this gap between domestic public acceptance and the global discourse on death-penalty abolition that constitutes one of the sociological considerations influencing the state to continue retaining the death penalty, while also providing the backdrop for the functional considerations discussed under the community-protection factor below.

3.7 Community-Protection and Crime-Prevention Factors

As a continuation of the sociological considerations discussed above, the fifth factor, community protection and crime prevention, situates the death penalty within a more concrete functional framework. The death penalty continues to be retained because it is regarded as an instrument for protecting the community against offenses with a broad and serious impact, particularly narcotics offenses, which are viewed as a serious, organized, and transnational threat (Rinaldi & Tutrianto, 2023; Diba & Hapsari, 2025). This functional consideration is likewise relevant to the problem of enforcing the law against other extraordinary crimes, such as corruption, which in Indonesia still faces obstacles in the form of poor coordination among law-enforcement agencies, weaknesses in evidence-gathering, and political intervention that undermines the independence of law enforcement (Simbolon, 2025). This condition reinforces the argument that the state regards the maximum sanction as a last-resort instrument for closing the gap left by law enforcement that has not yet achieved optimal effectiveness.

Nevertheless, this preventive rationale remains a matter of debate. Amnesty International states that there is no evidence showing that the death penalty produces a stronger deterrent effect than other punishments, and research on death-penalty policy with respect to narcotics likewise points to problems of effectiveness, since the high rate of narcotics crime cannot simply be halted by the threat of the death penalty alone (Diba & Hapsari, 2025). The community-protection and crime-prevention factor is therefore more accurately understood as a

functional rationale used by the state to retain the death penalty, rather than as empirical evidence that the death penalty is more effective than other punishments.

3.8 The Hierarchy and Interrelation among the Factors

The five factors set out above do not stand on equal footing; rather, they form a functional hierarchy. The juridical factor is a necessary condition that supplies formal legitimacy, but it is not sufficient to explain why the state chooses to retain the death penalty rather than abolish it. The legal-political factor occupies the most dominant position within this framework, because it is legal politics that actually determines how the juridical norm is reconstructed, as seen in the change from Article 10 of the former Criminal Code to Article 100 of the New Criminal Code, while also serving as the node that synthesizes the philosophical, sociological, and community-protection considerations into a single policy decision. The last three factors function as mutually reinforcing substantive justifications: the retributive-utilitarian philosophical argument provides ethical justification, public-opinion support provides social legitimacy, while the community-protection argument provides functional justification, even though its empirical basis with respect to any deterrent effect remains a matter of debate (Putri, 2024).

Understanding this hierarchy is essential to answering the question posed in the introduction, namely that the “compromistic” character of death-penalty policy is not merely a normative description, but a structural consequence of the way the legal-political factor absorbs and balances the other four factors. This compromise is concretely reflected in the conditional death-penalty mechanism under Article 100 of the New Criminal Code, which retains the threat of the death penalty as an instrument of community protection while at the same time opening room for the convict's self-improvement as a form of accommodation for humanitarian values.

4. CONCLUSION

The continued retention of the death penalty within Indonesia's criminal-justice system is influenced by five interrelated factors arranged in a hierarchy. The juridical factor provides the foundation of formal legitimacy, reinforced by Constitutional Court Decision Number 2-3/PUU-V/2007 and by the inclusion of the death penalty in various special laws. The legal-political factor occupies the most dominant position, as it directly reshapes that juridical norm and synthesizes the philosophical, sociological, and community-protection considerations into a single policy. The philosophical factor reflects the combination of retributive and relative/utilitarian sentencing theory; the sociological factor consists of public-opinion support that still favors the application of the death penalty to extraordinary crimes, amid pressure from civil-society organizations seeking its abolition; and the community-protection and crime-prevention factor, whose effectiveness as a deterrent remains a matter of debate and has not yet been empirically proven.

These findings confirm that the “compromistic” character of death-penalty policy in Indonesia is a structural consequence of the way the legal-political factor absorbs and balances the other four factors, rather than merely a normative judgment on the debate between human rights and community protection. This policy continues to retain the death penalty as an instrument of community protection, but with restrictions and mechanisms that are more humane than those found under the former Criminal Code. The policy implications and recommendations arising from these findings include the development of technical guidelines for Article 100, periodic empirical evaluation of the effectiveness of the death penalty, and the need for further sociological research.

5. RECOMMENDATIONS

Several policy implications may be drawn from the analysis above. First, because the conditional death-penalty mechanism under Article 100 of Law Number 1 of 2023 allows for a fairly open-ended assessment of a convict's remorse and commendable attitude and conduct during the probationary period, the government and the legislature need to promptly develop technical guidelines that clarify the parameters of that assessment, so that its implementation does not give rise to subjectivity, disparity in decisions, or legal uncertainty. Second, given that the community-protection factor still rests on a deterrence assumption not yet fully supported by empirical evidence, periodic evaluative studies are needed on the effectiveness of the death penalty as an instrument of crime prevention, particularly for narcotics offenses and corruption, so that the policies adopted by the government are always grounded in adequate evidence. Third, given that the discussion of the sociological factor in this article still relies on secondary data, further empirical research, including regularly updated public-opinion surveys, is needed to map the shift in public acceptance of the death penalty following the enactment of the New Criminal Code. Fourth, given that the strength of the philosophical argument is uneven across categories of crime, evaluation of death-penalty policy should be conducted in a differentiated manner by type of crime, rather than treating narcotics offenses, terrorism, and corruption as equivalent. Fifth, future public-opinion surveys need to adopt a more rigorous methodology, including testing the strength of support and its sensitivity to information and to alternative sentencing options, so that policy genuinely reflects an informed public preference.

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