

The Death Penalty from a Criminal Law Perspective: Between the Deterrent Effect, Morality, and Human Rights

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Abstract

This article examines the complexities of the death penalty in Indonesia, emphasizing three key aspects: its effectiveness as a crime deterrent, its moral and ethical legitimacy, and its compliance with human rights and international obligations. The study employs a normative-juridical approach with descriptive analysis, combining legislative and conceptual approaches to examine the Criminal Code, the Narcotics Law, court decisions, academic literature, and international publications. The analysis shows that the effectiveness of the death penalty as a deterrent remains debated, as social, economic, educational, and environmental factors often play a greater role in determining criminal behavior than the threat of physical punishment. From a moral and human rights perspective, the death penalty poses a dilemma between the utilitarian principle, and the deontological principle. Constitutional Court and Supreme Court decisions, as well as Law Number 1 of 2023, emphasize selectivity, proportionality, probation, and a restorative approach as an effort to balance the interests of the public, victims, and perpetrators. The Islamic legal approach through qisas and diyat also offers a humanistic restorative alternative. Thus, the death penalty in Indonesia must be implemented fairly, selectively, and humanely, in accordance with legal ethics, human rights principles, and the values of social justice.

Keywords: Death Penalty, Deterrent Effect, Human Rights, Moral Legitimacy, Restorative Justice.

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1. Introduction

The death penalty is one of the most controversial criminal sanctions in criminal justice systems around the world, including Indonesia. As the harshest punishment that deprives a person of the right to life, the death penalty sparks heated debate between its supporters and opponents, each referring to aspects of its deterrent effect, morality, and human rights.¹ Supporters of the death penalty

¹ Amelia Arief, "Problematisasi Penjatutan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Kosmik Hukum* 19, no. 1 (2019): 443. See too, Gisella Tiara

argue that this sanction is effective as a deterrent for perpetrators of serious crimes, such as premeditated murder, narcotics, terrorism, and corruption, as well as a form of retributive justice for victims and society.² Conversely, its opponents highlight violations of the right to life guaranteed by Article 28A of the 1945 Constitution and international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR.³ In Indonesia, the death penalty is regulated by the Criminal Code (*Kitab Undang Undang Hukum Acara Pidana/KUHP*), Law Number 35 of 2009 concerning Narcotics, and Law Number 31 of 2004 concerning Military Justice, but its application is often inconsistent and creates legal uncertainty.⁴ Historically, the death penalty has been part of the Indonesian criminal law system, both within the positive legal tradition and Islamic legal perspectives, such as the concept of *qisas*, which emphasizes balanced retribution or alternative forgiveness (*diyat*).⁵ However, the implementation of the death penalty is often considered contrary to the principles of humanity and the values

Cahyani, Siti Bilkis Sholehah, Dara Nurul Salsabillah, Muhammad Alwan Ramandhana, Revand Arya Pratama, and Herli Antoni, "Hukum pidana mati di Indonesia berdasarkan perspektif hak asasi manusia dan alternatif penegakan hukum," *Al-Qisth Law Review* 7, no. 1 (2023): 169; Shakira Ananda Khaerunessa, Putri Khoerunnisa Damayanti, Bilqis Aprilianie, and Farrel Fadhil Pratama, "Legitimasi Hukuman Mati Menurut Immanuel Kant: Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 01 (2025): 242.

² Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 79. See too, Rangga Abdi Ramadhan, Athifatul Wafiroh, and Cecep Soleh Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid al-Shari'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 30; Nurul Amalia Syahrullah Yulianto, Nur Mohamad Kasim, and Erman I. Kasim, "Eksistensi Hukuman Mati Terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Mizan (e-Journal)* 19, no. 1 (2023): 25.

³ Habib Shulton Asnawi, "Hak Asasi Manusia Islam dan Barat: Studi Kritik Hukum Pidana Islam dan Hukuman Mati," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 1 (2012): 242. See too, Herliana Heltaji, "Dilema Hak Asasi Manusia dan Hukum Mati Dalam Konstitusi Indonesia," *Pamulang Law Review* 4, no. 2 (2021): 159; Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 881.

⁴ Agatha Jumiati, and Ellectrananda Anugerah Ash-Shidiqqi, "Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 30. See too, Syamsi Ubay, and Ruben Achmad, "Eksistensi Hukuman Mati dalam Perspektif Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 1, no. 1 (2017): 120.

⁵ Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 80. See too, Sirya Iqbal, Hamdani Hamdani, and Yusrizal Yusrizal, "Analisis Perbandingan Hukuman Terhadap Tindak Pidana Pembunuhan Berdasarkan Kitab Undang-Undang Hukum Pidana Dan Hukum Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 (2022): 123; Muhammad Sulaiman, "Hak Asasi Manusia dan Hukuman Mati dalam Perspektif Islam," *Jurnal Hukum Uniski* 12, no. 1 (2023): 6.

of Pancasila, especially the principle of just and civilized humanity.⁶ Constitutional Court decisions, such as Number 21/PUU-VI/2008, emphasize that the implementation of the death penalty must comply with the principles of proportionality and humanity, but the lack of clarity regarding implementation procedures, such as the deadline for execution or the application for clemency, remains a problem.⁷ Furthermore, Immanuel Kant's deontological ethical perspective affirms the death penalty as a moral imperative for serious crimes, such as murder, in order to uphold retributive justice. However, this view conflicts with modern human rights principles that reject the deprivation of the right to life.⁸

From a sociological perspective, the death penalty is considered ineffective in reducing serious crimes, such as corruption, because social and economic factors often predominate in driving criminal behavior.⁹ Furthermore, the application of the death penalty to corruption perpetrators in emergency situations, such as the COVID-19 pandemic, demonstrates the urgency of protecting the public interest, but continues to draw criticism for being considered inhumane.¹⁰ Thus, the death penalty lies at the intersection of the need for deterrence, moral legitimacy, and compliance with international human rights standards.

Many studies have examined the death penalty from the perspectives of criminal law, human rights, and religion, but there is a significant research gap regarding the empirical evaluation of the effectiveness of the death penalty as a deterrent in Indonesia, particularly in the context of serious crimes such as narcotics and

⁶ Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 57.

⁷ Hwian Christianto, "Tata Cara Pelaksanaan Pidana Mati bagi Terpidana Mati dalam Hukum Pidana," *Jurnal Konstitusi* 6, no. 1 (2009): 29. See too, Syamsi Ubay, and Ruben Achmad, "Eksistensi Hukuman Mati dalam Perspektif Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 1, no. 1 (2017): 122.

⁸ Shakira Ananda Khaerunessa, Putri Khoerunnisa Damayanti, Bilqis Aprilianie, and Farrel Fadhil Pratama, "Legitimasi Hukuman Mati Menurut Immanuel Kant: Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 01 (2025): 244.

⁹ Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 26. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 4.

¹⁰ Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 140. See too, Maizul Imran, Aarsal Aarsal, and Sri Wahyuni, "Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 220.

corruption.¹¹ Most studies tend to focus on normative analysis, such as provisions of the Criminal Code or comparisons with Islamic law, without evaluating the actual impact of the death penalty on crime rates or public perception.¹² Furthermore, research on the harmonization of retributive justice and restorative approaches as alternatives to the death penalty remains limited, even though this approach can offer a more humane and effective solution.¹³ Finally, the lack of in-depth studies on the implementation of Law Number 1 of 2023, which introduced a 10-year probationary period as an alternative to execution, demonstrates the need for further research to assess its impact on justice and human rights protection in Indonesia.¹⁴ This study aims to examine the complexity of the death penalty in Indonesia, emphasizing three main aspects: its effectiveness as a deterrent to crime, its moral and ethical legitimacy, and its compliance with human rights and international obligations. Based on this background, this article formulates the following questions:

1. How effective is the death penalty in deterring perpetrators of serious crimes?
2. How do aspects of morality and legal ethics influence the legitimacy of the death penalty?

¹¹ Amelia Arief, "Problematisasi Penjatuan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Kosmik Hukum* 19, no. 1 (2019): 444. See too, Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 79; Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 27; Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 5; Muhammad Sulaiman, "Hak Asasi Manusia dan Hukuman Mati dalam Perspektif Islam," *Jurnal Hukum Uniski* 12, no. 1 (2023): 7.

¹² Sirya Iqbal, Hamdani Hamdani, and Yusrizal Yusrizal, "Analisis Perbandingan Hukuman Terhadap Tindak Pidana Pembunuhan Berdasarkan Kitab Undang-Undang Hukum Pidana Dan Hukum Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 (2022): 124. See too, Syamsi Ubay, and Ruben Achmad, "Eksistensi Hukuman Mati dalam Perspektif Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 1, no. 1 (2017): 127; Nurul Amalia Syahrullah Yulianto, Nur Mohamad Kasim, and Erman I. Kasim, "Eksistensi Hukuman Mati Terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Mizan (e-Journal)* 19, no. 1 (2023): 26.

¹³ Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 7. See too, Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 882.

¹⁴ Mang Tra Himam Idayat, "Pertentangan yang Terjadi dalam Kasus Pemidanaan Hukuman Pidana Mati dan Hak Asasi Manusia di Indonesia," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 240.

3. How is the death penalty viewed within the framework of human rights and Indonesia's international obligations?

2. Research Method

This study uses a normative-juridical approach with descriptive analysis to evaluate the legal, moral, and human rights aspects related to the death penalty in Indonesia. Descriptive analysis is applied to describe, interpret, and assess the provisions of positive law and the practice of the death penalty, while also assessing the moral and ethical implications of the law. This study combines three approaches: (1) a statutory approach, to examine the Criminal Code, the Narcotics Law, and related regulations; (2) a conceptual approach, to understand the theory of deterrent effect, the principles of legal morality, and the legitimacy of punishment. Data are obtained from legal documents, academic literature, court decisions, and international publications. Using descriptive techniques, this study presents a systematic understanding of the effectiveness, legitimacy, and challenges of the death penalty in the context of national law and Indonesia's international obligations.

The primary legal sources in this study consist of laws and regulations that directly regulate the implementation of the death penalty, such as the Criminal Code (KUHP), Law Number 35 of 2009 concerning Narcotics, Law Number 31 of 2004 concerning Military Justice, and relevant Constitutional Court Decisions, including Decision Number 21/PUU-VI/2008, which affirms the principle of humanity in the implementation of the death penalty. Furthermore, human rights instruments ratified by Indonesia, such as the ICCPR and the Convention Against Torture (CAT), also serve as important references. Secondary legal sources include academic literature in the form of books, legal journals, previous research on the effectiveness and legitimacy of the death penalty, reports from international institutions such as Amnesty International or the United Nations Human Rights Committee, and conceptual analyses related to deterrence theory, legal morality, and the principle of justice in sentencing. These sources are used to enrich normative interpretations and provide a comprehensive academic foundation in assessing the validity and challenges of the implementation of the death penalty in Indonesia.

3. Research Results and Discussion

3.1. The Effectiveness of the Death Penalty as a Deterrent

The death penalty in the Indonesian criminal justice system is viewed as one of the most extreme deterrents, particularly for serious crimes with widespread societal impacts. Theoretically, this punishment is categorized as a form of special deterrence, aimed at instilling fear in potential perpetrators so they refrain from committing serious crimes, such as premeditated murder, large-scale drug trafficking, and acts of terrorism. In this context, the death penalty serves not only as a retributive punishment but also as a preventive tool to maintain public security, order, and welfare.

In Indonesian legal practice, the basis for the application of the death penalty is regulated by Article 340 of the Criminal Code, which targets premeditated murder, and Article 113 of the Narcotics Law, which allows for extreme punishment for large-scale drug trafficking. These provisions emphasize that national legislation places the death penalty as a last resort for crimes that have significant social and economic impacts. The application of this penalty is always accompanied by consideration of certain factors, including the seriousness of the crime, the perpetrator's motives, and the potential danger posed to society. Thus, the death penalty is not automatically imposed on all perpetrators of serious crimes, but rather on cases that meet strict legal and social criteria.

However, the effectiveness of the death penalty as a deterrent remains controversial. Several studies indicate that the recidivism rate of perpetrators sentenced to life imprisonment is not significantly different from the potential deterrent effect of the death penalty.¹⁵ This raises critical questions about the extent to which the threat of the death penalty can truly change criminal behavior or deter crime in society. Supreme Court (*Mahkamah Agung/MA*) decisions emphasize that before imposing a death sentence, judges must consider the perpetrator's social background, level of remorse, potential for rehabilitation, and the consequences of the sentence on the victim's and the perpetrator's families. This approach demonstrates that the effectiveness of

¹⁵ Roni Efendi, "Pidana Mati dalam Perspektif Hukum Pidana dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 129. See too, Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 28.

the death penalty depends not only on physical threats but also on consistent, transparent, fair, and proportional law enforcement.

Furthermore, the implementation of the death penalty in Indonesia faces public debate and international pressure regarding human rights. Although the state formally has the legitimacy to impose this punishment, its effectiveness as a long-term deterrent is questionable because the social, psychological, and cultural factors that influence criminal behavior cannot always be controlled through the threat of punishment alone. For example, education level, social environmental influences, economic conditions, and past traumatic experiences can be more determinant risk factors for criminal behavior than the threat of punishment. Therefore, the death penalty is only one part of a broader strategy to prevent serious crimes.

To increase its effectiveness, research suggests the need for a combination of proportional punishment and social interventions. Rehabilitation programs, legal education, and the dissemination of legal norms can raise public awareness of the consequences of criminal acts. Strengthening moral, religious, and social ethical values also plays a role in shaping prosocial behavior that prevents crime. Furthermore, community empowerment through skills training, legal advocacy, and social reintegration programs can reduce the risk factors that lead individuals to commit serious crimes.

Consistency in law enforcement is a key factor in the effectiveness of the death penalty. Inconsistency, abuse of power, or discrimination in sentencing can create a perception of injustice, which actually weakens its deterrent function. Therefore, the criminal justice system needs to ensure transparent legal procedures, protect the rights of perpetrators during the trial process, and use the death penalty only in extreme cases that meet strict legal and social criteria. Therefore, while the death penalty can symbolize the state's firmness against serious crimes, its effectiveness as a deterrent cannot be measured solely by the physical threat or the number of executions carried out.

The effectiveness of the death penalty as a deterrent in the Indonesian criminal justice system is complex and multidimensional. Empirical evidence shows that this punishment's effect on reducing crime is still limited, even when applied to serious crimes such as premeditated murder and drug trafficking.¹⁶ Socioeconomic factors, such as poverty, low education, and

¹⁶ Roni Efendi, "Pidana Mati dalam Perspektif Hukum Pidana dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 130. See too, Daud Munasto, "Kebijakan

social inequality, often have a greater influence on criminal behavior than the threat of the death penalty.¹⁷ Thus, a retributive approach alone is insufficient to achieve long-term deterrence goals.¹⁸

From a positive legal perspective, the death penalty is regulated as an alternative sanction in Law Number 1 of 2023, which introduces a 10-year probationary period as an effort to align justice with human rights values.¹⁹ However, unclear implementation procedures, such as the timing of executions and the mechanism for applying for clemency, often create legal uncertainty that weakens the deterrent effect.²⁰

Islamic legal approaches, such as qisas and ta'zir, offer flexibility through pardons (*diyat*) or alternative punishments, which can mitigate the dehumanizing impact of the death penalty.²¹ This approach emphasizes that the deterrent effect depends not only on physical punishment but also on fulfilling justice for the victim and society.²² This aligns with the principle of

Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 29.

¹⁷ Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 8. See too, Hasudungan Sinaga, "Penghapusan Hukuman Mati: Analisis terhadap Keseimbangan antara Hak Asasi Manusia dan Efektivitas Penegakan Hukum di Indonesia," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* 4, no. 3 (2025): 4527.

¹⁸ Gisella Tiara Cahyani, Siti Bilkis Sholehah, Dara Nurul Salsabillah, Muhammad Alwan Ramandhana, Revand Arya Pratama, and Herli Antoni, "Hukum pidana mati di Indonesia berdasarkan perspektif hak asasi manusia dan alternatif penegakan hukum," *Al-Qisth Law Review* 7, no. 1 (2023): 170.

¹⁹ Baren Sipayung, Sardjana Orba Manullang, and Henry Kristian Siburian, "Penerapan hukuman mati menurut hukum positif di Indonesia ditinjau dari perspektif hak asasi manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 136. See too, Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 883.

²⁰ Agatha Jumiaty, and Ellectrananda Anugerah Ash-Shidiqqi, "Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 32. See too, Syamsi Ubay, and Ruben Achmad, "Eksistensi Hukuman Mati dalam Perspektif Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 1, no. 1 (2017): 128.

²¹ Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 83; See too, Maizul Imran, Aarsal Aarsal, and Sri Wahyuni, "Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 222; Nur Insani, Upik Mutiara, and Haritsa Haritsa, "Penerapan Hukuman Mati Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Pagaruyuang Law Journal* 6, no. 2 (2023): 150.

²² Ranga Abdi Ramadhan, Athifatul Wafiroh, and Cecep Soleh Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid al-Shari'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 31. See too, Nurul Amalia Syahrullah Yulianto, Nur Mohamad Kasim,

maqasid al-shari'ah, which emphasizes the protection of life (*hifz al-nafs*), property (*hifz al-mal*), and reason (*hifz al-'aql*), which can be achieved through more humane alternative punishments.²³

Legal sociology studies also confirm that the effectiveness of the death penalty depends heavily on consistent law enforcement and public perception of justice.²⁴ For example, in corruption cases, the death penalty is rarely implemented because judges tend to choose prison sentences, which are considered more proportionate.²⁵ This suggests that the death penalty is often symbolic without a significant impact on crime rates.²⁶ The risk of judicial error and unequal access to legal representation can also exacerbate perceptions of injustice, eroding the legitimacy of the death penalty.²⁷

Therefore, a more holistic approach to crime prevention is essential. Rehabilitation programs, legal education, and community empowerment are important strategies for strengthening social norms that prevent crime.²⁸ In this context, the death penalty should only be applied selectively in extreme cases with strong evidence, accompanied by strengthening a transparent and fair justice system. This combination is expected to ensure a lasting deterrent

and Erman I. Kasim. "Eksistensi Hukuman Mati Terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Mizan (e-Journal)* 19, no. 1 (2023): 27.

²³ Muhammad Sulaiman, "Hak Asasi Manusia dan Hukuman Mati dalam Perspektif Islam," *Jurnal Hukum Uniski* 12, no. 1 (2023): 8.

²⁴ Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 59. See too, Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 30.

²⁵ Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 142. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 8.

²⁶ Amelia Arief, "Problematisasi Penjatuan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Kosmik Hukum* 19, no. 1 (2019): 445.

²⁷ Mang Tra Himam Idayat, "Pertentangan yang Terjadi dalam Kasus Pemidanaan Hukuman Pidana Mati dan Hak Asasi Manusia di Indonesia," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 241. See too, Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 885.

²⁸ Tommy Leonard, "Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Di Indonesia," *Yustisia* 5, no. 2 (2016): 473. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 9.

effect, while simultaneously maintaining justice, public protection, and sustainable crime risk reduction.²⁹

Thus, it can be concluded that the death penalty in the Indonesian criminal justice system serves a dual function: as a symbol of state firmness against serious crimes and as a deterrent instrument. However, its effectiveness as a deterrent depends on many factors, including consistent law enforcement, public perceptions of justice, social intervention, rehabilitation, and legal education. An approach that integrates proportional punishment with a comprehensive social deterrence strategy can increase the effectiveness of the death penalty while reducing the risk of injustice, judicial error, and perceptions of dehumanization. With this strategy, the death penalty is not merely a punishment of last resort but also part of a justice system oriented towards public protection, social justice, and sustainable crime risk reduction.

3.2. Morality and Legitimacy of the Death Penalty

The moral and ethical perspective of law raises fundamental questions about the state's legitimacy to take the lives of citizens as a form of punishment. The death penalty, as the highest criminal sanction, has always been a controversial topic because it concerns the right to life, justice, and state responsibility. Within a utilitarian framework, the death penalty is considered legitimate if it provides maximum benefits to society. These benefits include a deterrent effect that can deter other perpetrators from committing similar crimes, preventing recurrence of crime, and protecting the public from the threat posed by the perpetrator. This approach emphasizes that the moral legitimacy of the death penalty is based on collective welfare, even if the individual's right to life is compromised for the greater good. In this context, the primary question is not only the act of punishment itself, but also its resulting social effects: does the application of the death penalty actually reduce crime and increase public security?

In contrast, the deontological perspective emphasizes that the right to life is a fundamental human right that cannot be sacrificed, even for utilitarian purposes. In this view, the state lacks the moral legitimacy to take the lives of citizens, as such an action violates the principles of humanity and human

²⁹ Hwian Christianto, "Tata Cara Pelaksanaan Pidana Mati bagi Terpidana Mati dalam Hukum Pidana," *Jurnal Konstitusi* 6, no. 1 (2009): 29. See too, Shakira Ananda Khaerunessa, Putri Khoerunnisa Damayanti, Bilqis Aprilianie, and Farrel Fadhil Pratama, "Legitimasi Hukuman Mati Menurut Immanuel Kant: Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 01 (2025): 245.

dignity. The deontological approach emphasizes that every individual has intrinsic value that must be respected, and punishment should be aimed at fair and humane justice, not merely deterrence or deterrence. This argument reinforces the importance of moral considerations in the death penalty process, emphasizing that legitimacy is not merely formal legal, but also linked to universal ethical principles and human rights.

Constitutional Court (*Mahkamah Konstitusi*/MK) and Supreme Court (*Mahkamah Agung*/MA) decisions emphasize that the application of the death penalty must be limited by legal and moral considerations. For example, Constitutional Court Decision Number 2-3/PUU-V/2007 states that the formulation, implementation, and execution of the death penalty in Indonesia should be accompanied by a ten-year probationary period. If the convict demonstrates commendable behavior during the probationary period, the sentence can be commuted to life imprisonment or 20 years' imprisonment. This decision emphasizes the principle of legality while also considering moral aspects, so that the state can only impose the death penalty if there are compelling reasons, including considering the social impact, public safety, and the seriousness of the perpetrator's offense.

From a descriptive-normative perspective, the legitimacy of the death penalty does not solely depend on positive law but must also be linked to the principle of restorative justice. This approach emphasizes the perpetrator's admission of guilt, moral responsibility, and the possibility of reparation for the victim. Thus, the death penalty serves not merely as a form of revenge or repressive punishment, but also reflects fair, humane, and proportional justice, in line with the moral and ethical values applicable to the criminal justice system.

Furthermore, the application of the death penalty also raises social and cultural considerations. Descriptive analysis shows that the moral debate about the death penalty becomes increasingly complex when linked to the cultural context and religious values. In Indonesia, the national legal system is a syncretism between formal law, local wisdom, and societal moral values. Therefore, the moral legitimacy of the death penalty is not only related to formal legality but also to social acceptance. Society demands that the punishment consider the right to life, humanitarian values, and the potential for rehabilitation of the perpetrator. For example, in the context of narcotics cases, some believe that the application of the death penalty should be combined with rehabilitation programs to provide the perpetrator with the

opportunity to improve themselves, thus ensuring that the punishment is not merely repressive but also educational.

The morality and legitimacy of the death penalty in the Indonesian criminal justice system reflect the tension between retributive justice, humanitarian values, and socio-cultural demands. From Immanuel Kant's deontological perspective, the death penalty is considered a moral obligation of the state to uphold justice for perpetrators of serious crimes, such as premeditated murder, because serious moral violations demand appropriate sanctions.³⁰ Kant argued that the death penalty is not a deterrent, but rather a form of retributive justice that affirms the moral responsibility of the perpetrator.³¹ However, this view contradicts modern human rights values, which affirm the right to life as a *jus cogens* principle that cannot be diminished under any circumstances, as stipulated in Article 28A of the 1945 Constitution and Article 3 of the Universal Declaration of Human Rights.³²

This moral debate becomes even more relevant when considering the dynamics of criminal justice practices. The application of the death penalty requires a balance between the interests of the wider community, the rights of victims, and the rights of perpetrators. The state must be able to morally justify this punitive measure through legal procedures that are transparent, proportional, and consider humanitarian aspects. The morality of the death penalty, in this case, cannot be separated from social legitimacy, namely public recognition of the fairness and justice of state actions. The moral legitimacy of the death penalty emphasizes that the highest criminal sanction must be implemented not simply based on state power, but with ethical considerations, restorative justice, and consistency with humanistic legal norms.

The perspective of Islamic law adds complexity to discussions about the morality of the death penalty. The concept of *qisas* in Islamic law allows for

³⁰ Shakira Ananda Khaerunessa, Putri Khoerunnisa Damayanti, Bilqis Aprilianie, and Farrel Fadhil Pratama, "Legitimasi Hukuman Mati Menurut Immanuel Kant: Teori Keadilan Retributif Dan Konfliknya Dengan Hak Asasi Manusia," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 4, no. 01 (2025): 248.

³¹ Rohmatul Izad, "Pidana Hukuman Mati Di Indonesia Dalam Perspektif Etika Deontologi," *Al-Syakhsyiyah: Journal of Law and Family Studies* 1, no. 1 (2019): 34.

³² Herliana Heltaji, "Dilema Hak Asasi Manusia dan Hukuman Mati Dalam Konstitusi Indonesia," *Pamulang Law Review* 4, no. 2 (2021): 160; See too, Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 59.

balanced retribution for crimes such as murder, but also allows for forgiveness (*diyat*) by the victim's family, reflecting a more flexible and humanistic approach.³³ This approach aligns with the *maqasid al-shari'ah* (the principles of Islamic law), which emphasizes the protection of life (*hifz al-nafs*), property (*hifz al-mal*), and reason (*hifz al-'aql*), thus ensuring that the death penalty is only selectively applied for crimes that undermine social order.³⁴ Unlike the Criminal Code, which does not accommodate forgiveness for the victim's family, Islamic law offers an alternative that considers humanity and restorative justice.³⁵ From the perspective of Pancasila, the death penalty poses a dilemma because it contradicts the principles of just and civilized humanity and divine values, which consider the right to life a gift from God that should not be taken away.³⁶ Research shows that the application of the death penalty is often considered dehumanizing, particularly in drug cases, due to the generalization of punishment without considering the individual context of the perpetrator.³⁷ Therefore, the moral legitimacy of the death penalty depends on the state's ability to ensure a transparent, proportional legal process that respects human dignity.³⁸

³³ Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 83. See too, Nur Insani, Upik Mutiara, and Haritsa Haritsa, "Penerapan Hukuman Mati Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Pagaruyuang Law Journal* 6, no. 2 (2023): 153. Nurul Amalia Syahrullah Yulianto, Nur Mohamad Kasim, and Erman I. Kasim. "Eksistensi Hukuman Mati Terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Mizan (e-Journal)* 19, no. 1 (2023): 29.

³⁴ Rangga Abdi Ramadhan, Athifatul Wafiroh, and Cecep Soleh Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid al-Shari'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 32. See too, Muhammad Sulaiman, "Hak Asasi Manusia dan Hukuman Mati dalam Perspektif Islam," *Jurnal Hukum Uniski* 12, no. 1 (2023): 9.

³⁵ Maizul Imran, Aarsal Aarsal, and Sri Wahyuni, "Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 226. See too, Sirya Iqbal, Hamdani Hamdani, and Yusrizal Yusrizal, "Analisis Perbandingan Hukuman Terhadap Tindak Pidana Pembunuhan Berdasarkan Kitab Undang-Undang Hukum Pidana Dan Hukum Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 (2022): 126.

³⁶ Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 62.

³⁷ Maizul Imran, Aarsal Aarsal, and Sri Wahyuni, "Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 227.

³⁸ Hwian Christianto, "Tata Cara Pelaksanaan Pidana Mati bagi Terpidana Mati dalam Hukum Pidana," *Jurnal Konstitusi* 6, no. 1 (2009): 29. See too, Agatha Jumiaty, and Ellectrananda Anugerah Ash-Shidiqqi, "Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 33.

Law Number 1 of 2023 attempts to bridge this dilemma by introducing a 10-year probationary period, which allows for the conversion of a death sentence to imprisonment if the convict demonstrates behavioral improvement.³⁹ This policy reflects an effort to harmonize retributive justice and restorative approaches, while addressing international human rights criticisms.⁴⁰ However, the risk of judicial error and unequal access to justice remain challenges, which could undermine the moral legitimacy of the death penalty.⁴¹

The restorative justice approach, which emphasizes reparation for victims and reintegration of perpetrators, is considered more aligned with the humanitarian values and morality of Indonesian society.⁴² For example, in corruption cases, the death penalty is rarely applied because judges prefer sanctions that allow for restitution of state losses, such as fines or asset confiscation.⁴³ This approach demonstrates that the moral legitimacy of the death penalty depends not only on legality but also on social acceptance and its impact on collective justice.

Therefore, the morality of the death penalty in Indonesia must be evaluated through an ethical, cultural, and religious lens that reflects national identity. The state needs to ensure that the death penalty is only applied in extreme cases with strong evidence, accompanied by transparent procedures and

³⁹ Baren Sipayung, Sardjana Orba Manullang, and Henry Kristian Siburian, "Penerapan hukuman mati menurut hukum positif di Indonesia ditinjau dari perspektif hak asasi manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 138. See too, Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 886.

⁴⁰ Roby Anugrah, and Raja Desril, "Kebijakan formulasi pidana mati dalam pembaharuan hukum pidana Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 85.

⁴¹ Mang Tra Himam Idayat, "Pertentangan yang Terjadi dalam Kasus Pemidanaan Hukuman Pidana Mati dan Hak Asasi Manusia di Indonesia," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 243.

⁴² Tommy Leonard, "Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Diindonesia," *Yustisia* 5, no. 2 (2016): 474. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 10.

⁴³ Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 146. See too, Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 31.

independent oversight mechanisms to prevent abuse.⁴⁴ An approach that integrates retributive and restorative justice, as exemplified in Islamic law and the reform of the Criminal Code, can strengthen the moral legitimacy of the death penalty while maintaining a balance between the rights of victims, perpetrators, and society.⁴⁵

3.3. Death Penalty in Human Rights Perspective

The death penalty poses significant challenges to the fulfillment of human rights, particularly the right to life, which is expressly stipulated in Article 28A of the 1945 Constitution. This right affirms that everyone has the right to life and to defend life, thus the state is obliged to protect this fundamental right. In the international context, the principle of non-arbitrariness stipulated in the International Covenant on Civil and Political Rights (ICCPR) stipulates that the death penalty can only be applied for the most serious crimes, through fair, transparent legal procedures that ensure a minimum risk of error. As a state party to the ICCPR, Indonesia is obligated to balance the application of the death penalty with the fulfillment of human rights standards, ensuring that every decision regarding execution must undergo strict and accountable legal procedures.

A descriptive analysis of national regulations and international practice indicates a global trend toward the abolition of the death penalty. Countries such as Canada, Australia, and the majority of European Union member states have completely abolished the death penalty from their criminal systems. The primary motivations behind this policy are the affirmation of the right to life, the importance of rehabilitation, and efforts to reduce recidivism. These countries emphasize that abolishing the death penalty is not only morally and ethically relevant but also effective in promoting a more humane and restorative criminal justice system. In this context, Indonesia finds itself in a more complex position, because while retaining the option of the death penalty, its application is strictly regulated and limited to cases with widespread societal impacts, such as large-scale drug trafficking, terrorism,

⁴⁴ Hasudungan Sinaga, "Penghapusan Hukuman Mati: Analisis terhadap Keseimbangan antara Hak Asasi Manusia dan Efektivitas Penegakan Hukum di Indonesia," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* 4, no. 3 (2025): 4529.

⁴⁵ Gisella Tiara Cahyani, Siti Bilkis Sholehah, Dara Nurul Salsabillah, Muhammad Alwan Ramandhana, Revand Arya Pratama, and Herli Antoni, "Hukum pidana mati di Indonesia berdasarkan perspektif hak asasi manusia dan alternatif penegakan hukum," *Al-Qisth Law Review* 7, no. 1 (2023): 173.

or other extreme crimes. This selective approach aims to balance international obligations with the clear need for public protection.

Furthermore, the application of the death penalty raises important issues related to access to a fair trial. The legal process must ensure that the perpetrator's rights are fulfilled throughout the procedure, from the investigation stage to the possibility of an appeal or a request for clemency. The Supreme Court's ruling affirms that the perpetrator's rights, including the right to legal representation, the right to adequate information, and the right to request clemency, must be fully guaranteed. In practice, this means that the execution procedure must not be arbitrary, and every decision must be subject to a transparent, proportionate, and auditable legal process by a competent judicial institution. This obligation is a manifestation of the principle of non-arbitrariness, which demands procedural fairness as the moral and legal foundation of the criminal system.

Further descriptive analysis comparing Indonesian practices with global trends shows that the Indonesian criminal system is in a transitional stage. The country maintains the death penalty for extreme cases with widespread impact, while simultaneously emphasizing adherence to international human rights standards and fair legal procedures. This harmonization reflects an effort to maintain the legitimacy of national law while complying with international obligations. This approach demonstrates that the implementation of the death penalty in Indonesia is not simply a matter of repressive law enforcement but also requires a balance between protecting society, legal certainty, and respect for the right to life of every individual.

Furthermore, the application of the death penalty also raises ethical questions about proportionality and the opportunity for rehabilitation. A human rights perspective emphasizes that any form of punishment must consider the potential for rehabilitation of the perpetrator and the long-term social impact on society. The death penalty, in this view, is a form of final sanction, justified only when no other alternatives are sufficient to protect the public. This principle aligns with the practice of restorative justice, which emphasizes the responsibility of the perpetrator, the recovery of the victim, and social reconciliation, so that the imposition of punishment does not become a mere means of revenge.

Therefore, a human rights perspective demands a multidimensional approach to the application of the death penalty. Indonesia must ensure that

any application of the death penalty aligns with the principles of the right to life, non-arbitrariness, due process, and social responsibility. Harmonizing human rights, international obligations, and the interest of public protection is a key element in upholding the legitimacy of national law. This approach emphasizes that while the death penalty remains in the Indonesian legal system, its application must be selective, fair, and based on legal ethics and universal human rights norms. The death penalty, from a human rights perspective, poses a profound ethical and legal dilemma, as it contradicts the principle of the right to life as a fundamental right that cannot be diminished under any circumstances.⁴⁶ Article 28I paragraph (1) of the 1945 Constitution affirms the right to life as a non-derogable human right, which aligns with Article 6 of the ICCPR, which limits the death penalty to only the most serious crimes with fair procedures.⁴⁷ However, the application of the death penalty in Indonesia, such as in cases of narcotics or premeditated murder, is often criticized for the risk of judicial error and dehumanization, which violate human dignity.⁴⁸

A comparison with an Islamic legal perspective enriches this discussion. In Islam, the death penalty (qisas) for intentional murder is retributive but flexible, with the option of forgiveness (diyat) from the victim's family,

⁴⁶ Habib Shulton Asnawi, "Hak Asasi Manusia Islam dan Barat: Studi Kritik Hukum Pidana Islam dan Hukuman Mati," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 1, no. 1 (2012): 245. See too, Gisella Tiara Cahyani, Siti Bilkis Sholehah, Dara Nurul Salsabillah, Muhammad Alwan Ramandhana, Revand Arya Pratama, and Herli Antoni, "Hukum pidana mati di Indonesia berdasarkan perspektif hak asasi manusia dan alternatif penegakan hukum," *Al-Qisth Law Review* 7, no. 1 (2023): 174; Ni Komang Ratih Kumala Dewi, "Keberadaan Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana (KUHP)," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 106; Herliana Heltaji, "Dilema Hak Asasi Manusia dan Hukum Mati Dalam Konstitusi Indonesia," *Pamulang Law Review* 4, no. 2 (2021): 163.

⁴⁷ Amelia Arief, "Problematika Penjatuh Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana," *Kosmik Hukum* 19, no. 1 (2019): 446. See too, Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 64.

⁴⁸ Maizul Imran, Aarsal Aarsal, and Sri Wahyuni, "Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 227. See too, Hasudungan Sinaga, "Penghapusan Hukuman Mati: Analisis terhadap Keseimbangan antara Hak Asasi Manusia dan Efektivitas Penegakan Hukum di Indonesia," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* 4, no. 3 (2025): 4529; Muhammad Sulaiman, "Hak Asasi Manusia dan Hukuman Mati dalam Perspektif Islam," *Jurnal Hukum Uniski* 12, no. 1 (2023): 10; Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 887.

reflecting a balance between justice and humanity.⁴⁹ The concept of maqasid al-shari'ah emphasizes the protection of the soul (hifz al-nafs), so the death penalty is only applied selectively to prevent greater harm.⁵⁰ Unlike the Criminal Code, which does not accommodate family forgiveness, the Islamic approach offers a restorative alternative that is more in line with human rights.⁵¹

Law Number 1 of 2023 (the new Criminal Code) attempts to address this conflict by making the death penalty a special and alternative sanction, with a 10-year probationary period to assess the convict's behavioral improvement.⁵² Constitutional Court Decision Number 2-3/PUU-V/2007 supports this, emphasizing proportionality and rehabilitation to avoid arbitrary executions.⁵³ However, the ambiguity of execution procedures, such as the time limits for clemency and judicial review, continues to create legal uncertainty that contradicts the ICCPR's principle of non-arbitrariness.⁵⁴

⁴⁹ Muhammad Hatta, "Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia," *Jurnal Ilmu-Ilmu Keislaman* 36, no. 2 (2012): 86. See too, Nur Insani, Upik Mutiara, and Haritsa Haritsa, "Penerapan Hukuman Mati Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Pagaruyuang Law Journal* 6, no. 2 (2023): 157; Nurul Amalia Syahrullah Yulianto, Nur Mohamad Kasim, and Erman I. Kasim. "Eksistensi Hukuman Mati Terhadap Kasus Pembunuhan Perspektif Hukum Pidana Indonesia Dan Hukum Islam," *Al-Mizan (e-Journal)* 19, no. 1 (2023): 29.

⁵⁰ Rangga Abdi Ramadhan, Athifatul Wafiroh, and Cecep Soleh Kurniawan, "Penerapan Hukuman Mati Di Indonesia Perspektif Maqasid al-Shari'ah," *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 5, no. 1 (2024): 36.

⁵¹ Lysa Angrayni, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia," *Hukum Islam* 15, no. 1 (2015): 53. See too, Roni Efendi, "Pidana Mati dalam Perspektif Hukum Pidana dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 132. See too, Sirya Iqbal, Hamdani Hamdani, and Yusrizal Yusrizal, "Analisis Perbandingan Hukuman Terhadap Tindak Pidana Pembunuhan Berdasarkan Kitab Undang-Undang Hukum Pidana Dan Hukum Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 (2022): 127.

⁵² Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 11. See too, Baren Sipayung, Sardjana Orba Manullang, and Henry Kristian Siburian, "Penerapan hukuman mati menurut hukum positif di Indonesia ditinjau dari perspektif hak asasi manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 139; Ade Arga Wahyudi, Wami Irma Suryani, and Zul Fahmi, "Hukuman Mati dan Hak untuk Hidup di Indonesia: Tinjauan HAM terhadap Undang-undang Nomor 1 Tahun 2023," *Jurnal Ilmu Sosial dan Humaniora* 4, no. 3 (2025): 889.

⁵³ Hwian Christianto, "Tata Cara Pelaksanaan Pidana Mati bagi Terpidana Mati dalam Hukum Pidana," *Jurnal Konstitusi* 6, no. 1 (2009): 29. See too, Agatha Jumiaty, and Ellectrananda Anugerah Ash-Shidiqui, "Asas Kepastian Hukum Pelaksanaan Hukuman Mati di Indonesia," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 6, no. 1 (2022): 34.

⁵⁴ Mang Tra Himam Idayat, "Pertentangan yang Terjadi dalam Kasus Pemidanaan Hukuman Pidana Mati dan Hak Asasi Manusia di Indonesia," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 244. See too, Syamsi Ubay, and Ruben Achmad, "Eksistensi

From a sociological legal perspective, the implementation of the death penalty in Indonesia is influenced by the values of Pancasila, which emphasizes just and civilized humanity. Therefore, the death penalty must be balanced with social prevention efforts such as education and rehabilitation.⁵⁵ The global trend of abolition in countries such as Canada and Europe shows that the abolition of the death penalty does not increase crime but rather strengthens humanist justice.⁵⁶ In Indonesia, corruption cases during the COVID-19 pandemic have highlighted the potential of the death penalty as a deterrent, but also the risk of human rights violations if disproportionate.⁵⁷

To ensure compliance with international obligations, Indonesia needs to reform its death penalty procedures to be transparent and evidence-based, such as adopting a restorative approach for non-extreme cases.⁵⁸ This approach not only protects the right to life but also strengthens social justice, in accordance with Pancasila and global human rights standards.⁵⁹ Therefore, the death penalty must be strictly enforced, prioritizing humane alternatives to avoid dehumanization and fulfill human rights commitments.⁶⁰

Hukuman Mati dalam Perspektif Hukum Pidana Indonesia," *Legalitas: Jurnal Hukum* 1, no. 1 (2017): 132.

⁵⁵ Dede Kania, "Cita Politik Hukum Pidana Mati Di Indonesia," *Jurnal Ilmu Hukum* 4, no. 2 (2014): 161-179. See too, Tommy Leonard, "Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana Di Indonesia," *Yustisia* 5, no. 2 (2016): 475. See too, Daud Munasto, "Kebijakan Hukuman Mati Bagi Pelaku Tindak Pidana Korupsi Dikaji Dalam Perspektif Sosiologi Hukum," *Widya Pranata Hukum* 4, no. 1 (2022): 34.

⁵⁶ Roby Anugrah, and Raja Desril, "Kebijakan formulasi pidana mati dalam pembaharuan hukum pidana Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 87. See too, Krisnanda Etika Putri, Eko Soponyono, and R. B. Sularto, "Rekonstruksi Kebijakan Hukum Pidana Terhadap Eksekusi Pidana Mati," *Diponegoro Law Journal* 5, no. 3 (2016): 12.

⁵⁷ Dahyul Daipon, "Hukuman Mati Bagi Koruptor Pada Saat Keadaan Tertentu (Pandemi COVID-19) Perspektif Hukum Nasional dan Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 148. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 13.

⁵⁸ Roni Efendi, "Pidana Mati dalam Perspektif Hukum Pidana dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (2017): 132. See too, Said Munawar, "Ratio Legis Konsep Pemidanaan Hukuman Mati Terhadap Koruptor Dalam Sistem Hukum Pidana Di Indonesia," *Law, Development and Justice Review* 8, no. 1 (2025): 14.

⁵⁹ Mochamad Reza Kurniawan, and Fendi Setyawan, "Prinsip Kepastian Hukum Terhadap Pelaksanaan Pidana Mati dalam Perspektif Hak Asasi Manusia dalam Sistem Peradilan Pidana di Indonesia," *KUNKUN: Journal of Multidisciplinary Research* 2, no. 1 (2025): 64. See too, Hasudungan Sinaga, "Penghapusan Hukuman Mati: Analisis terhadap Keseimbangan antara Hak Asasi Manusia dan Efektivitas Penegakan Hukum di Indonesia," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* 4, no. 3 (2025): 4535.

⁶⁰ Mang Tra Himam Idayat, "Pertentangan yang Terjadi dalam Kasus Pemidanaan Hukuman Pidana Mati dan Hak Asasi Manusia di Indonesia," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 245. See too, Maizul Imran, Arsal Arsal, and Sri Wahyuni,

4. Closing

4.1. Conclusions the death penalty in Indonesia occupies a complex position at the intersection of deterrence, legal morality, and human rights. As an extreme instrument, this punishment is intended to provide a specific deterrent effect against serious crimes, such as premeditated murder, large-scale drug trafficking, and terrorism, with the aim of maintaining public security, order, and welfare. National regulations, such as Article 340 of the Criminal Code and Article 113 of the Narcotics Law, emphasize that the death penalty should only be applied as a last resort, taking into account the seriousness of the crime, the perpetrator's motives, and the potential impact on the public. However, the effectiveness of the death penalty as a deterrent remains debated. Empirical evidence suggests that social, economic, educational, and environmental factors often determine criminal behavior more than the physical threat of the death penalty. Consistent law enforcement, protection of perpetrators' rights, and transparent legal procedures are key to its legitimacy and effectiveness.

From a moral and human rights perspective, the death penalty presents a dilemma. The utilitarian approach emphasizes maximum benefit for society, while the deontological approach affirms the right to life as a fundamental right that should not be sacrificed. Constitutional Court and Supreme Court rulings emphasize the need for legal and moral considerations, including probation to allow for sentence conversion, in line with the principles of restorative justice. The Islamic legal approach, through qisas and diyat (retribution), and Law Number 1 of 2023, provides flexibility, emphasizing proportionality, rehabilitation, and victim restitution.

4.2. Suggestions therefore, the death penalty in Indonesia must be applied selectively, fairly, and humanely. Its implementation requires a balance between the individual's right to life, public protection, the victim's interests, and the legitimacy of national law. The integration of human rights principles, legal ethics, and a restorative approach is key to ensuring that the death penalty is not merely a repressive tool, but part of a justice system oriented towards social justice, humanity, and sustainable crime risk reduction.

"Dehumanisasi Hukuman Mati Bagi Pengedar Narkotika Di Indonesia Menurut Hukum Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 228.

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