

The Death Penalty As A Conditional Sanction In Law Number 1 of 2023 Concerning the Criminal Code

Intanan¹, Ahmad Jamaludin²

¹² Walisongo State Islamic University (UIN), Semarang, Indonesia

Email Korespondensi: Intananmareta07@gmail.com

Submission:

2025-10-08

Review:

2025-11-25

Accepted:

[2026-01-20](#)

Publish:

2025-11-30

ABSTRACT; The death penalty is one of the most controversial forms of sanctions in the modern criminal system. Law No. 1 of 2023 concerning the Criminal Code (KUHP) introduces a new paradigm by placing the death penalty as a conditional sentence whose implementation can be postponed for ten years, and opens the possibility of conversion to life imprisonment. This study aims to comparatively analyze the concept of the death penalty in the 2023 Criminal Code, the old Criminal Code (colonial legacy), and Islamic criminal law. The method used is normative-comparative research through a review of laws and regulations, doctrines, and classical and contemporary Islamic legal sources. The results of the study show that the 2023 Criminal Code applies a humanistic-progressive approach by emphasizing opportunities for rehabilitation and evaluation of the convict's behavior, in contrast to the old Criminal Code which places the death penalty as an absolute sanction without a conditional postponement mechanism. Meanwhile, Islamic criminal law regulates the death penalty in certain contexts through the categories of hudud, qisash, and ta'zir, with the principles of restorative justice, forgiveness, and consideration of public interest. This comparison shows a meeting point between the new Criminal Code and Islamic criminal law in emphasizing the corrective aspect, proportionality, and the opportunity for forgiveness. This research is expected to contribute to the discourse of criminal law reform in Indonesia and strengthen a more humanistic and contextual approach to punishment with Indonesian values.

Keywords: *Death Penalty, Conditional Sentence, 2023 Criminal Code, Old Criminal Code, Islamic Criminal Law*

INTRODUCTION

The death penalty is one of the most controversial forms of punishment in modern legal systems, particularly as it relates to the right to life, a human right guaranteed by various national and international legal instruments. In Indonesia, the debate over the existence of the death penalty has undergone significant dynamics following the enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP). This new regulation introduces the concept of the death penalty as a conditional sentence, a mechanism that allows for a ten-year postponement of the death penalty with the option of commuting it to life imprisonment based on the convict's behavior. This concept reflects a more humanistic and progressive approach and aligns with the value of rehabilitation in modern criminal justice.¹

Unlike the 2023 KUHP, the previous KUHP (*Wetboek van Strafrecht*) positioned the death penalty as an absolute sanction without any mechanism for a conditional postponement or sentence reduction. This shift in orientation not only reflects evolving national legal values but also demonstrates efforts to harmonize with human rights principles and demands for criminal law reform.²

On the other hand, Islamic criminal law has long recognized the concept of the death penalty under the categories of *hudud*, *qisas*, and *ta'zir*. However, its application is not absolute, as it allows for forgiveness (*afw*), *diyat* (retribution), and consideration of public interest. Thus, Islamic criminal law has a more restorative dimension than the common assumption that tends to view it as a repressive system. The similarities between the concept of the conditional death penalty in the new Criminal Code and the flexibility in Islamic criminal law represent an interesting point of intersection for analysis.³

In light of these developments, a comparative study of the new, old, and Islamic criminal laws is crucial for understanding the direction of Indonesian criminal law reform and the potential convergence of substantive justice values within the national legal system. This research is expected to contribute to academic discourse on death penalty reform and the relevance of Islamic criminal law values in Indonesia's pluralistic context.⁴

PROBLEM

1. How is the death penalty regulated as a conditional sanction in Law No. 1 of 2023 concerning the Criminal Code?
2. How does the concept of the death penalty in the new Criminal Code differ from the provisions of the death penalty in the old Criminal Code?
3. What is the concept of the death penalty in Islamic criminal law, specifically in the categories of *hudud*, *qisas*, and *ta'zir*?

¹ Waruwu, R. P. R. (2025, September 22). Meluruskan konsep pidana mati dalam KUHP baru. *MariNews Mahkamah Agung*.

² *ibid*

³ *ibid*

⁴ *ibid*

RESEARCH METHODS

This research employs a juridical-normative method with statutory, conceptual, and comparative approaches. The statutory approach is used to examine the provision of the death penalty as a conditional sanction in Law No. 1 of 2023 and compare it with the provisions of the death penalty in the previous Criminal Code. The conceptual approach is utilized to examine the basic ideas and principles of imposing the death penalty in Islamic criminal law, particularly those related to the *maqashid al-syari'ah* (objectives of justice), the principle of justice, and the limits of its application.⁵

Meanwhile, a comparative approach is used to analyze the differences in substance, philosophy, and purpose of punishment between the new regulation, the previous Criminal Code, and the concept of the death penalty in Islamic law. Research data were obtained through a literature review of relevant laws and regulations, scientific literature, books, journals, and court decisions. The analytical technique used is qualitative analysis by interpreting primary, secondary, and tertiary legal materials to produce systematic, critical, and comprehensive legal arguments.⁶

DISCUSSION

The death penalty is a form of punishment that imposes the death of a convicted person by the state as a form of sanction for crimes deemed the most serious and severe. In the current Indonesian legal system, the death penalty is retained but is positioned as a last resort and is highly specific, no longer a principal punishment imposed automatically. General provisions for the death penalty are contained in Law No. 1 of 2023 concerning the Criminal Code, specifically Articles 98, 99, 100, and 101, which govern the status, implementation, and possible amendments to the death penalty.⁷

Furthermore, the technical procedures for implementing the death penalty in Indonesia are regulated by separate implementing regulations outside the Criminal Code (for example, regulations regarding the implementation of executions by law enforcement officers). In Indonesia, the death penalty is used for crimes classified as extremely serious, such as certain premeditated murders, certain drug crimes, serious terrorism, certain treason against the president/vice president, and several other serious crimes regulated by specific laws and the Criminal Code.⁸

However, its application remains within a framework of prudence, proportionality, and testing against human rights principles. A prime example is the

⁵ Lestari, Dewi. 2021. *Hukuman Mati dalam Sistem Hukum Indonesia*. Jakarta: Penerbit Nusantara Hukum.

⁶ *ibid*

⁷ Mardhiah, A. (2023, September 26). Politik hukum pidana Indonesia tentang pidana mati dalam KUHP baru. Pengadilan Tinggi NAD.

⁸ *ibid*

crime of premeditated murder under Article 340 of the old Criminal Code (equivalent in the new Criminal Code), where judges can issue conditional death sentences if the perpetrator demonstrates deep remorse. The case of Ferdy Sambo, sentenced to death at first instance and on appeal, illustrates the potential of this application: after 10 years of probation, the sentence can be evaluated based on behavior. This sanction aims to balance retribution and rehabilitation.

The new Criminal Code positions the death penalty not as a principal penalty, but as a special penalty that must always be imposed as an alternative to life imprisonment or a fixed-term prison sentence. This means that when an article contains the death penalty, the judge still has the option of imposing life imprisonment or a long-term prison sentence instead.⁹

Supporters of the death penalty argue that this punishment serves as a maximum deterrent and protects society against perpetrators of extraordinary crimes. Opponents of the death penalty emphasize that it violates the right to life, is potentially irreparable in the event of a wrongful conviction, and, according to some, has not been conclusively proven to be more effective in reducing crime than life imprisonment.

The procedure for implementing the death penalty in Indonesia is principally regulated by Presidential Decree No. 2 of 1964 and implementing police regulations, with the primary method of execution being by firing squad at a designated location, not in public. Executions may only be carried out after a final and binding verdict and the president's clemency request has been rejected. Prior to execution, the following conditions must be met: a final death sentence, exhaustion of ordinary and extraordinary legal remedies (appeals, cassation, judicial review), and rejection of clemency by the president. Furthermore, executions are postponed for pregnant women, breastfeeding women, and people with mental illnesses until their health and circumstances permit execution.¹⁰

The old Criminal Code (in effect since 1918, a legacy of the Dutch colonial era) and the new Criminal Code (Law No. 1/2023, fully effective in 2026) differ fundamentally in structure, philosophy, and implementation.

The following table is a comparison of the old Criminal Code and the new Criminal Code.

Aspect	Old Criminal Code (KUHP Lama)	New Criminal Code (KUHP Baru)
Book Structure	3 books: General Provisions, Crimes, Violations (49 chapters, 569 articles)	2 books: General Provisions, Criminal Offenses (42 chapters, 628 articles)
Philosophy	Retributive (revenge-based, classical approach)	Restorative justice (recovery-oriented, modern approach)
Legal	Only individuals (natural)	Individuals and corporations

⁹ Tim Hukumonline. (2024, Januari 21). Macam-macam sanksi pidana dan contohnya. Hukumonline.

¹⁰ Detikcom. (n.d.). Bagaimana proses hukuman mati di Indonesia: Begini aturannya. Detik News.

Aspect	Old Criminal Code (KUHP Lama)	New Criminal Code (KUHP Baru)
Subjects	persons)	
Death Penalty	Principal punishment	Special conditional punishment (10-year probation period)
Legality Principle	Strict legality, no analogy allowed	Strict legality, no analogy allowed
Fines	Alternative, regulated per article	Principal/additional punishment, categorized (I–VIII up to IDR 50 billion)
Customary Offenses	Not regulated	Recognized as criminal offenses

The new Criminal Code shifts the orientation of Indonesian criminal law from a rigid, retaliatory colonial legacy to a more modern national system based on restorative justice and responsive to societal and technological developments. Structural changes, recognition of corporate and customary law, provision for the conditional death penalty, and the addition of various new crimes demonstrate efforts to align criminal law with Pancasila values and the needs of contemporary law enforcement.¹¹

CONCLUSION

This research shows that the regulation of the death penalty in Law No. 1 of 2023 brings a paradigmatic shift in the Indonesian criminal law system. The new Criminal Code no longer positions the death penalty as an absolute sanction, but rather as a conditional sentence* that prioritizes rehabilitation, allows for evaluation of the convict's behavior, and opens up the possibility of commutation with life imprisonment. This approach reflects a more humanistic direction in criminal policy and is responsive to developments in human rights values.

In contrast, the old Criminal Code positioned the death penalty as a final punishment without any mechanisms for postponement, special pardons, or reinterpretation of the purpose of punishment. This difference demonstrates the fundamental reforms undertaken through the 2023 Criminal Code to adapt the Indonesian penal system to the social, political, and moral dynamics of modern society.

Meanwhile, Islamic criminal law views the death penalty through three main categories: hudud, qisas, and ta'zir. Despite containing strict provisions, Islamic criminal law emphasizes the principles of restorative justice, the opportunity for forgiveness, the provision of diyat (reparation), and considerations of public interest. Thus, the concept of the death penalty in Islamic criminal law is not rigid, but flexible and takes into account the social situation and the interests of the victim.

¹¹ ibid

The comparison shows a common ground between the 2023 Criminal Code and Islamic criminal law, particularly in the aspects of providing opportunities for self-improvement, the existence of a postponement mechanism, and the embodiment of humanitarian values. The reformulation of the death penalty in the new Criminal Code also reflects the spirit of harmonizing religious values, morals, and human rights principles within the Indonesian context.

REFERENCES

- Waruwu, R. P. R. (2025, September 22). Meluruskan konsep pidana mati dalam KUHP baru. *MariNews Mahkamah Agung*.
- Mardhiah, A. (2023, September 26). Politik hukum pidana Indonesia tentang pidana mati dalam KUHP baru. *Pengadilan Tinggi NAD*.
- Tim Hukumonline. (2024, Januari 21). *Macam-macam sanksi pidana dan contohnya*. Hukumonline.
- Detikcom. (n.d.). *Bagaimana proses hukuman mati di Indonesia: Begini aturannya*. Detik News.
- Badan Pengembangan Sumber Daya Manusia Hukum dan HAM. (n.d.). *Cara pelaksanaan pidana mati*. BPSDM Kemenkumham.
- Lestari, Dewi. 2021. *Hukuman Mati dalam Sistem Hukum Indonesia*. Jakarta: Penerbit Nusantara Hukum.
- Tim Redaksi. 2023. *Kitab Undang-Undang Hukum Pidana (UU No. 1 Tahun 2023)*. Jakarta: Kementerian Hukum dan HAM RI.