



Conditional Death Penalty in the Indonesian National Criminal Code as an Effort to Bridge Legal Certainty and Human Rights Protection

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Abstract

The conditional death penalty under the Indonesian National Criminal Code represents a significant transformation in Indonesia's capital punishment policy by repositioning the death penalty as a special punishment subject to a probationary mechanism and possible sentence commutation. This study examines the legal construction and position of the conditional death penalty, evaluates its compatibility with the requirements of legal certainty and human rights protection, analyzes its role as a normative compromise between retention and abolition, and identifies the principal regulatory and institutional challenges affecting its implementation. The study employs normative legal research using statutory, conceptual, and human rights approaches. The analysis draws on the Indonesian National Criminal Code and its subsequent legislative developments, relevant criminal law doctrines, and international human rights instruments. The findings show that the conditional death penalty constitutes a distinct sentencing model in which capital punishment is retained while its execution is subjected to additional legal conditions and the possibility of sentence conversion. From the perspective of legal certainty, its effectiveness depends on clear and objective assessment criteria, defined institutional authority, predictable procedures, and adequate mechanisms of review. From a human rights perspective, the possibility of commutation may provide an additional safeguard for the right to life and human dignity, but postponement of execution alone is insufficient to ensure substantive protection. The study further finds that the conditional death penalty can be understood as an intermediate normative model between conventional retention and abolition, although its legitimacy depends on the quality of the legal and institutional safeguards governing its implementation. Accordingly, strengthening the regulatory framework requires objective evaluation standards, clearly allocated institutional responsibilities, transparent procedures, effective oversight, and conformity with national and international human rights standards. This study contributes to Indonesian criminal law scholarship by providing an integrated normative framework for evaluating the conditional death penalty through the interconnected dimensions of legal certainty, human rights protection, institutional accountability, and procedural safeguards.

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INTRODUCTION

The death penalty is the most severe form of punishment within the criminal justice system because its application directly concerns the most fundamental human right, namely the right to life. Consequently, capital punishment remains one of the most contested issues in contemporary legal systems that recognize human rights as a fundamental principle (Susanto et al., 2025). The debate is

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generally framed through two competing perspectives. The retentionist perspective supports the continued availability of capital punishment on grounds such as public security, social order, and the need for an appropriate response to exceptionally serious crimes (Hidayah, 2025). In contrast, the abolitionist perspective challenges the death penalty because of its implications for the protection of the right to life and human dignity (Nugraha & Absori, 2025). International human rights law adds another dimension to this debate. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the inherent right to life while subjecting the use of the death penalty in retentionist states to strict limitations. Thus, the central legal issue extends beyond the binary question of retention or abolition and concerns the conditions under which the state may exercise its most severe penal authority consistently with legality, human dignity, and human rights protection (Bhismaning & Hariyanto, 2026; Untoro et al., 2023).

Indonesia provides an important context in which this tension can be examined. The Indonesian legal system continues to recognize the death penalty for certain serious offenses, while its continued use has generated debate regarding its compatibility with constitutional principles, human dignity, and human rights protection (Putra, 2025; Rafai, 2026). A significant development occurred with the enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP Nasional). The new Criminal Code repositions the death penalty as a special punishment rather than an ordinary principal punishment and introduces a conditional mechanism involving a probationary period and the possibility of sentence commutation. The regulatory framework was subsequently adjusted through Law Number 1 of 2026 on Penal Adjustment, reflecting the continuing development of the legal architecture governing capital punishment. Within this framework, the death penalty is no longer structured solely as a sanction leading directly to execution, but as a punishment whose continuation may be reassessed through a statutory mechanism. This development creates a distinctive sentencing model situated between conventional retention of capital punishment and its complete abolition.

The conditional death penalty also reflects a broader development in sentencing philosophy. Rather than approaching punishment exclusively through retributive considerations, the framework incorporates corrective, rehabilitative, and humanistic elements (Tjandra & Heliany, 2026). The possibility of sentence commutation provides a legal mechanism through which subsequent circumstances and the convicted person's conduct may affect the ultimate consequence of the sentence while preserving the state's authority to impose capital punishment. In this sense, the conditional death penalty may be understood as an intermediate sentencing model that attempts to accommodate the competing demands of criminal justice: public protection and legal certainty on the one hand, and respect for human dignity and the right to life on the other (Jamilah, 2025). Nevertheless, the existence of a probationary and commutation mechanism does not, by itself, establish that the framework provides sufficient legal certainty or effective human rights protection.

From the perspective of legal certainty, the effectiveness of the conditional death penalty depends on the clarity of the standards and procedures governing its implementation. Although subsequent legislative developments have clarified several aspects of the regulatory framework, important questions remain concerning the objective assessment of the convicted person's conduct during the probationary period, the institutional responsibilities involved in such assessment, the evidentiary basis for decision-making, and the procedural safeguards governing the continuation or commutation of the sentence. Evaluative concepts relating to behavioral improvement, rehabilitation, and commendable conduct may generate different interpretations when they are not supported by sufficiently clear and verifiable criteria (Fikry et al., 2026). Such uncertainty may result in inconsistent implementation, particularly when different institutions exercise discretion without uniform assessment standards. The problem therefore concerns not only the existence of legal rules, but also whether those rules provide sufficient predictability, consistency, and accountability in the exercise of the state's most severe penal authority (Pradipa & Widyawati, 2026).

The human rights dimension further strengthens the need for normative examination. The possibility of sentence commutation may provide an additional safeguard for the right to life by ensuring that execution does not necessarily operate as an automatic consequence of a death sentence. However, postponement of execution cannot itself be regarded as sufficient human rights protection. Prolonged uncertainty concerning the ultimate status of a death sentence may expose convicted persons to psychological and legal burdens associated with the death row phenomenon

(Daja & Irayadi, 2025). Moreover, the legitimacy of the conditional mechanism depends on whether convicted persons are treated in accordance with human dignity and whether decisions concerning execution or commutation are governed by transparent, accountable, and reviewable procedures. Accordingly, the conditional death penalty must be evaluated not merely in terms of its formal capacity to postpone execution, but also in relation to the right to life, human dignity, proportionality, procedural fairness, and internationally recognized human rights standards (Fardin & Susanto, 2025).

Previous studies have examined the conditional death penalty from different perspectives. Bhismaning and Hariyanto (2026) emphasized legal certainty in the execution of death sentences under the National Criminal Code, while Fikry et al. (2026) focused on the need for objective criteria under Article 100. Hapsari et al. (2026) examined the conditional death penalty in relation to criminal law reform and non-derogable rights, whereas Daja & Irayadi (2025) highlighted the legal, social, and psychological implications of delayed execution. These studies show that legal certainty, human rights, assessment criteria, and prolonged uncertainty have been discussed, but largely as separate issues. Limited attention has been given to how these dimensions interact within a single normative sentencing framework.

This study addresses this gap by examining the conditional death penalty as an integrated normative sentencing model rather than merely as a legislative innovation. Its novelty lies in analyzing the legal construction of the conditional death penalty, legal certainty, human rights protection, institutional accountability, and procedural safeguards as interconnected requirements within a single analytical framework. Through this approach, the study assesses whether the conditional death penalty can function as a meaningful intermediate model between the continued retention and abolition of capital punishment and identifies the regulatory conditions necessary for its consistent and accountable implementation. Accordingly, the study examines the legal construction and position of the conditional death penalty within the Indonesian National Criminal Code; evaluates the mechanism from the perspectives of legal certainty and human rights protection, particularly the right to life and human dignity; analyzes its position as a normative compromise between retention and abolition; and identifies the principal regulatory and institutional challenges affecting its implementation. The study contributes to Indonesian criminal law scholarship by demonstrating that the legitimacy of the conditional death penalty depends not merely on the availability of a probationary period or sentence commutation, but on objective assessment standards, clearly defined institutional responsibilities, procedural transparency, effective oversight, and adequate safeguards against arbitrary decision-making.

METHOD

Research Design and Methodological Approach

This study employs normative legal research to examine the legal construction, normative implications, and implementation requirements of the conditional death penalty within Indonesia's National Criminal Code. Normative legal research generally focuses on legislation, legal principles, legal doctrines, and other normative legal materials rather than on the empirical measurement of institutional practices or individual behavior (Budiana et al., 2026). Accordingly, the analysis is doctrinal and prescriptive, with particular attention to legal norms, statutory provisions, legal principles, and human rights standards relevant to the regulation of the conditional death penalty.

The analysis is organized around four interconnected dimensions. First, it examines the legal construction and position of the conditional death penalty within Indonesia's sentencing system, including the normative implications of the probationary mechanism provided under the National Criminal Code (Putri et al., 2024). Second, it assesses the extent to which the mechanism raises issues relating to legal certainty and human rights protection, including the clarity of applicable criteria, procedural safeguards, and the protection of fundamental rights (Putri et al., 2024; Hapsari et al., 2026). Third, it considers whether the conditional death penalty may be understood as an intermediate normative model between conventional retention and abolition, an issue that has also been discussed in recent legal scholarship (Susanto et al., 2025). Fourth, it identifies the regulatory and institutional requirements that may be relevant to ensuring the consistent, transparent, and accountable implementation of the mechanism.

Research Approaches

Three complementary approaches are employed: statutory, conceptual, and human rights approaches. The statutory approach is used to examine the legal framework governing the conditional death penalty, principally Law Number 1 of 2023 concerning the Indonesian National Criminal Code as subsequently amended by Law Number 1 of 2026 on Penal Adjustment. Particular attention is given to Articles 98–101 concerning the legal position of the death penalty, its execution, the ten-year probationary mechanism, and the possibility of sentence conversion. Related statutory provisions governing sentencing, clemency, and the execution of criminal judgments are also considered to determine the coherence of the conditional death penalty within the broader Indonesian criminal justice system.

The conceptual approach is used to examine the legal principles underlying the conditional death penalty, particularly legal certainty, proportionality, sentencing, rehabilitation, institutional discretion, accountability, human dignity, retentionism, and abolitionism. These concepts provide the analytical framework for determining whether the conditional death penalty constitutes a coherent sentencing model and whether the discretion inherent in its implementation is sufficiently constrained by legal standards.

The human rights approach evaluates the conditional death penalty in relation to internationally recognized human rights principles, particularly the right to life, human dignity, protection against arbitrary deprivation of life, and procedural safeguards in capital cases. Particular attention is given to Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and the interpretative standards contained in Human Rights Committee General Comment No. 36. Comparative jurisprudence and practices from other jurisdictions are used selectively to provide normative context rather than as a separate comparative-law methodology.

Sources of Legal Materials

The study uses primary and secondary legal materials. Primary legal materials include Law Number 1 of 2023 concerning the Indonesian National Criminal Code as amended by Law Number 1 of 2026, other relevant Indonesian legislation, the ICCPR, and relevant authoritative international human rights materials. The original and amended formulations of the provisions governing capital punishment are distinguished where necessary to identify changes in the legal construction of probation, execution, and sentence conversion. Secondary legal materials consist of peer-reviewed journal articles, scholarly books, legal commentaries, and academic publications concerning capital punishment, conditional sentencing, legal certainty, human rights, criminal-law reform, and institutional implementation. Secondary materials are selected purposively on the basis of their direct relevance to the legal issues examined, authority, and contribution to the contemporary scholarly debate. Recent studies are prioritized where they address developments under the National Criminal Code, while earlier scholarship is retained where necessary to establish relevant legal doctrines and theoretical foundations.

Procedure for Legal Material Analysis

The analysis of legal materials is conducted systematically through four stages. First, relevant legal materials are identified and classified according to the three principal issues addressed in the research: the regulation of the conditional death penalty, its relationship with legal certainty and human rights, and the normative challenges associated with its implementation. Second, the relevant provisions are interpreted using grammatical, systematic, and teleological interpretation. Grammatical interpretation is employed to determine the textual meaning of the relevant provisions. Systematic interpretation examines their relationship with other provisions within the National Criminal Code and the broader criminal justice framework. Teleological interpretation considers the objectives underlying the regulation, particularly criminal law reform, sentencing rationales, rehabilitation, legal certainty, and human rights protection.

Third, the results of statutory interpretation are examined against relevant legal principles and doctrines. This stage identifies normative inconsistencies, regulatory gaps, ambiguities, and potential conflicts between the conditional death penalty and the principles of legal certainty and human rights protection. Fourth, the findings from the statutory, conceptual, and human rights analyses are synthesized through legal reasoning. The synthesis is used to determine the normative position of

the conditional death penalty and to formulate conclusions concerning the adequacy of its existing regulatory framework.

Prescriptive Analysis and Formulation of Recommendations

The prescriptive analysis is conducted after identifying and evaluating the existing regulatory framework. Its purpose is to formulate legal arguments concerning how the regulation of the conditional death penalty should be strengthened. The recommendations are based on six normative criteria: legal certainty, consistency of legal norms, proportionality, clarity of institutional authority, procedural fairness, and conformity with human rights standards. These criteria are applied specifically to the mechanisms governing the probationary period, the assessment of the convicted person's conduct, the determination of sentence commutation, and the allocation of authority among relevant institutions. Where the analysis identifies ambiguity or regulatory gaps, the study formulates prescriptive recommendations through doctrinal legal reasoning. The recommendations are therefore directed toward establishing objective behavioral assessment criteria, clearly defined institutional authority, transparent procedures for evaluating the probationary period, and predictable mechanisms for sentence commutation.

These elements are considered necessary to prevent inconsistent interpretation and application while ensuring that the conditional death penalty remains compatible with the right to life and human dignity. Through this analytical process, the study moves beyond a descriptive examination of the National Criminal Code. It evaluates whether the conditional death penalty possesses sufficient normative foundations to function as a legally certain and human-rights-compliant sentencing mechanism. The combination of statutory, conceptual, and human rights approaches provides a comprehensive basis for assessing both the internal coherence of the Indonesian regulatory framework and its compatibility with contemporary principles of criminal law and international human rights law.

RESULTS AND DISCUSSION

Regulation and Legal Position of the Conditional Death Penalty under the Indonesian National Criminal Code

The enactment of Law Number 1 of 2023 concerning the Indonesian National Criminal Code (KUHP Nasional) represents a substantial reorientation of Indonesia's legal policy on capital punishment. Unlike the previous Criminal Code, which positioned the death penalty as a principal punishment, the National Criminal Code places it within the category of special punishment. Article 98 stipulates that the death penalty constitutes a special punishment imposed as a last resort to prevent crime and protect society. This provision is significant because it changes the normative status of capital punishment from an ordinary penal sanction into an exceptional measure whose application requires stronger justification (Ahmad et al., 2025). The reform consequently reflects a movement away from an exclusively retributive conception of punishment toward a more selective and evaluative sentencing framework. The most important manifestation of this reform is the introduction of the conditional death penalty. Articles 99–101 of the National Criminal Code establish a mechanism through which the death penalty is not immediately executed but is subject to a probationary period. Under Article 100, the death penalty is accompanied by a ten-year probationary period (Mandiana & Lisanawati, 2026). The original formulation of Article 100 required consideration of factors including the convicted person's remorse, prospects for rehabilitation, and role in the offense. The provision therefore introduced an evaluative dimension into capital sentencing by allowing the subsequent conduct and circumstances of the convicted person to influence the ultimate legal consequence of the sentence. This mechanism distinguishes the Indonesian model from a conventional death sentence in which the final judgment leads directly to execution.

The reform is particularly important when examined in light of the objectives of criminal law reform. Previous scholarship has generally interpreted the conditional death penalty as evidence of Indonesia's attempt to humanize capital punishment while maintaining its availability for exceptionally serious crimes. Such studies emphasize the probationary period as an intermediate mechanism between retention and abolition (Jamilah, 2026). The present study extends this

argument by demonstrating that the significance of the reform lies not merely in the postponement of execution, but in the reconstruction of the legal status of the death penalty itself (Djarmika & Kurniawan, 2026). The death penalty is no longer conceived solely as a definitive penal consequence; it becomes a conditional legal status whose continuation is dependent upon the operation of a statutory mechanism. This distinction is important because the conditional death penalty should not be equated with ordinary clemency. In a conventional clemency system, commutation generally occurs as an exceptional intervention after the judicial process. By contrast, the Indonesian model incorporates the possibility of sentence transformation into the structure of the death sentence itself (Djarmika & Kurniawan, 2026). In this respect, the conditional death penalty constitutes a hybrid sentencing model combining judicial determination, a statutory probationary period, institutional evaluation, and the possibility of subsequent sentence conversion.

A comparative perspective reinforces this distinctive position. Jurisdictions that retain capital punishment, including several Southeast Asian states, generally regulate commutation through mechanisms of executive clemency, pardon, or review. The institutional arrangements and frequency of such interventions vary considerably among jurisdictions. Indonesia's conditional model is distinctive because the possibility of conversion is connected directly to the statutory construction of the death sentence rather than being treated solely as an exceptional post-conviction exercise of executive discretion. The comparative perspective therefore indicates that Indonesia is developing a model that occupies an intermediate position between conventional capital punishment and abolitionist sentencing policy. The legal development has, however, continued following the enactment of Law Number 1 of 2026, which amended several provisions concerning capital punishment in the National Criminal Code. The amendment is particularly relevant to Articles 99–101 because it modifies aspects of execution, probation, and sentence conversion. The ten-year probationary period remains a central feature, while the amended provisions provide greater clarification concerning the legal consequences associated with the expiration of the probationary period and the conversion of the sentence. This development demonstrates that the conditional death penalty remains an evolving legal institution rather than a fully settled sentencing mechanism (Dayati, 2026). Accordingly, the principal finding of this study is that the conditional death penalty represents a structural transformation of capital punishment rather than merely a procedural postponement of execution. Its normative significance derives from the fact that the state retains the death penalty while simultaneously subjecting its implementation to additional statutory conditions (Suprawan & Prayuti, 2025). The reform therefore creates a new sentencing category whose legitimacy depends on whether the legal framework is sufficiently precise to regulate the transition from the imposition of the death sentence to either its execution or conversion.

Legal Certainty, Human Rights, and the Implications of the Conditional Death Penalty for Criminal Law Reform

Although the conditional death penalty represents a significant reform, the findings demonstrate that its normative design continues to present challenges concerning legal certainty and human rights protection (Hapsari et al., 2026). The principal issue is not the existence of the ten-year probationary period itself, but the legal standards and institutional procedures governing what occurs during and after that period. A probationary mechanism can only provide legal certainty if the conditions, assessment criteria, institutional responsibilities, and legal consequences attached to it are sufficiently clear and predictable. The original formulation of Article 100 illustrates this difficulty. Concepts such as remorse, prospects for rehabilitation, and commendable conduct are evaluative in nature and require further legal interpretation (Fikry et al., 2026). Although such concepts may support a more individualized and humanistic sentencing policy, their normative openness may also create inconsistent application if they are not accompanied by objective assessment standards. The amendment introduced through Law Number 1 of 2026 addresses some aspects of the previous formulation, but the broader issue remains: the statutory framework must establish sufficiently transparent procedures through which the relevant conduct and circumstances of a convicted person are assessed.

This finding develops previous research that has identified the need for implementing regulations concerning the conditional death penalty. Earlier studies largely focused on the progressive character of the ten-year probationary period and its potential to humanize capital

punishment. The present study demonstrates that the reformatory value of the mechanism cannot be assessed solely by reference to its humanitarian objective. Its effectiveness ultimately depends upon procedural institutionalization. Without clear standards, the conditional death penalty may transfer uncertainty from the question of whether capital punishment should be imposed to the question of how the sentence should subsequently be evaluated and converted. The issue is also relevant to the principle of legality. Legal certainty requires that individuals be able to anticipate the legal consequences of their conduct and that the exercise of state power be constrained by sufficiently determinate legal norms. In the context of conditional capital punishment, this principle extends beyond the initial judicial sentence. It also requires clarity concerning the conditions under which execution may occur, the circumstances under which conversion becomes possible, the institutions authorized to undertake the relevant assessment, and the procedural safeguards available to the convicted person (Pratiwi & Rusdiana, 2025). The conditional death penalty therefore demonstrates that legal certainty in sentencing is a continuing process rather than a condition established solely by the issuance of a final judicial decision (Kurniawan & Ezzerouali, 2024).

From a human rights perspective, the framework must also be assessed against Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 6 recognizes the right to life and subjects the use of the death penalty, in states that have not abolished it, to strict limitations. The Human Rights Committee's General Comment No. 36 further emphasizes that the right to life must be protected against arbitrary deprivation and that safeguards surrounding capital punishment must be substantive and effective. The relevance of these standards to the Indonesian model lies in the fact that postponement of execution does not, by itself, eliminate the human rights concerns associated with capital punishment. The conditional mechanism may nevertheless provide an important safeguard if it creates a genuine opportunity for sentence conversion and ensures that execution is not treated as an automatic consequence of a capital conviction (Jamaludin, 2026). Its human rights value therefore depends on the quality of the procedures surrounding the probationary period. Objective assessment, institutional accountability, access to appropriate review, humane treatment, and transparent decision-making are essential to prevent the conditional death penalty from becoming merely a delayed form of conventional capital punishment.

The comparative perspective also supports this conclusion. The experience of other jurisdictions demonstrates that the existence of mechanisms for pardon or commutation does not necessarily guarantee consistent or rights-protective outcomes. Institutional design significantly influences how capital punishment is implemented. Indonesia can therefore draw a broader normative lesson from comparative practice: the effectiveness of a conditional sentencing model depends on clearly allocated institutional authority and transparent standards governing the transformation of the sentence. The findings consequently indicate that the conditional death penalty should be understood as a normative intermediate model between retention and abolition, but not as a final solution to the controversy surrounding capital punishment. Its principal contribution to Indonesian criminal law reform lies in creating an institutional space in which the state can reassess the necessity of execution after the imposition of a death sentence. However, that potential can only be realized if the regulatory framework establishes objective criteria, clearly defined institutional responsibilities, and transparent procedures for determining whether the sentence should be executed or converted.

The study therefore contributes to the development of Indonesian sentencing policy by shifting the analytical focus from the binary question of whether the death penalty should be retained or abolished toward the quality of the legal safeguards governing its application. This approach demonstrates that the success of the conditional death penalty should be evaluated according to its capacity to constrain arbitrary state power, provide predictable legal consequences, and establish meaningful human rights safeguards. The continuing refinement of Articles 98–101 through subsequent legislative development confirms the need for an implementation framework capable of translating the reformatory objectives of the National Criminal Code into consistent sentencing practice. Overall, the conditional death penalty constitutes a significant innovation in Indonesian criminal law, but its normative legitimacy remains dependent on the quality of its implementation. The reform should therefore be accompanied by comprehensive implementing regulations that establish objective evaluation standards, clarify institutional authority, guarantee procedural transparency, and ensure conformity with international human rights obligations (Tjandra &

Heliany, 2026). In this way, the conditional death penalty can function not merely as a compromise between retentionist and abolitionist positions, but as a coherent instrument of contemporary sentencing policy grounded in legality, accountability, proportionality, and respect for human dignity.

The Conditional Death Penalty from the Perspective of Legal Certainty

Legal certainty is a fundamental element of the rule of law because criminal norms must provide predictable standards, clearly defined authority, and consistent legal consequences, particularly when the state exercises its most coercive power. In the context of the conditional death penalty, this requirement becomes especially important because the legal status of a convicted person remains subject to a statutory probationary mechanism after the death sentence has been imposed. Law Number 1 of 2023 concerning the Indonesian National Criminal Code initially established the death penalty as a special punishment under Article 98 and regulated its conditional application through Articles 99–101. Article 100 introduced a ten-year probationary period and, in its original formulation, required consideration of factors including remorse, prospects for rehabilitation, and the convicted person's conduct in determining the subsequent treatment of the sentence. Although these provisions represent a departure from an immediate-execution model, the findings of this study indicate that the existence of a probationary period alone does not ensure legal certainty. The principal normative problem lies in the determination of the standards, procedures, and institutional authority through which the convicted person's status is evaluated. Concepts such as “remorse,” “improvement in attitude and behavior,” and “commendable conduct,” particularly in the original formulation of Article 100, are inherently evaluative and may generate different interpretations unless supported by objective and verifiable criteria.

This concern is consistent with previous studies that identify the conditional death penalty as a progressive development in Indonesian criminal law but also recognize the need for implementing regulations to operationalize its provisions (Putri et al., 2024). The present study advances this scholarship by demonstrating that the central issue is not simply the ambiguity of individual terms, but the broader relationship between normative certainty and institutional discretion. This distinction is important because excessive discretion in a capital case may produce unequal treatment among similarly situated convicted persons and weaken the principle of equality before the law. The subsequent amendment through Law Number 1 of 2026 has clarified several aspects of Articles 99–101, including the legal consequences of the probationary period and the conversion of the death sentence, thereby demonstrating legislative efforts to reduce uncertainty. Nevertheless, the amended framework still requires clear implementing mechanisms concerning the assessment of conduct, institutional responsibilities, and procedural safeguards. Comparative experience also demonstrates that mechanisms for commutation or clemency require clearly defined institutional procedures to prevent arbitrary or inconsistent outcomes; jurisdictions such as Malaysia, Singapore, and Thailand employ different institutional models for capital punishment review and commutation, illustrating that the legal effect of a capital sentence depends substantially on the design of the institutions responsible for its implementation. F

From the perspective of international human rights law, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) requires strict safeguards against arbitrary deprivation of life, while the Human Rights Committee's General Comment No. 36 emphasizes the need for rigorous legal and procedural safeguards in cases involving capital punishment. Thus, the legal-certainty problem identified in this study also has a direct human-rights dimension: uncertainty concerning the criteria and procedures governing execution or commutation may increase the risk of arbitrary decision-making and prolong the psychological burden associated with a death sentence. The normative implication is therefore that legal certainty in the conditional death penalty must extend beyond the formal existence of statutory provisions to encompass clear assessment criteria, defined institutional competence, transparent procedures, and effective mechanisms of review. Accordingly, the study contributes to Indonesian criminal law reform by proposing that the conditional death penalty be developed as a structured sentencing mechanism in which discretion is constrained by objective legal standards (Jamaludin, 2026). Such regulatory strengthening is necessary to ensure that the reform introduced by the National Criminal Code produces predictable and accountable sentencing outcomes rather than merely transferring uncertainty from the initial imposition of the

death penalty to the subsequent process of determining whether the sentence should be executed or converted.

The Conditional Death Penalty from the Perspective of Human Rights

The conditional death penalty under the Indonesian National Criminal Code raises a fundamental human rights question concerning the extent to which a state may retain capital punishment while simultaneously strengthening protection of the right to life and human dignity. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the inherent right to life and, for states that have not abolished capital punishment, permits its use only under strictly limited conditions, particularly for the “most serious crimes” and subject to stringent procedural safeguards. Although Indonesia is a State Party to the ICCPR and has not ratified the Second Optional Protocol aimed at abolishing the death penalty, its continued retention of capital punishment does not remove its obligation to ensure that its application is non-arbitrary and consistent with international human rights standards. Within this framework, Articles 98–101 of Law Number 1 of 2023 concerning the Indonesian National Criminal Code, as subsequently amended by Law Number 1 of 2026, represent an attempt to introduce additional safeguards by classifying the death penalty as a special punishment and establishing a ten-year probationary mechanism before execution or sentence conversion. The findings of this study indicate, however, that the human rights significance of the conditional death penalty cannot be assessed solely by the fact that execution is postponed. Its legitimacy depends on whether the probationary mechanism provides a genuine and legally enforceable opportunity to reconsider the continuation of the death sentence and whether the convicted person is treated in accordance with human dignity throughout the process.

This finding develops previous studies that generally regard the conditional death penalty as a more humanistic alternative to immediate execution ([Muhaimin, 2022](#)), by demonstrating that its human rights value ultimately depends on the substantive quality of the safeguards accompanying the conditional mechanism. The issue is particularly important in relation to the death row phenomenon, whereby prolonged uncertainty concerning execution may produce severe psychological suffering ([Padlillah & Heriyanto, 2025](#)). International human rights jurisprudence has recognized that excessive delays and the conditions associated with prolonged detention under a death sentence may, in particular circumstances, raise concerns under the prohibition of cruel, inhuman, or degrading treatment. The European Court of Human Rights, for example, developed significant jurisprudence concerning prolonged detention under sentence of death in *Soering v. United Kingdom*, while international human rights bodies have subsequently emphasized that the manner and conditions of detention of persons facing execution must remain compatible with human dignity. These standards are relevant to Indonesia because a ten-year probationary period may create a prolonged period of uncertainty if the legal consequences of the evaluation process are not sufficiently clear. The normative implication is therefore that postponement of execution should not be treated automatically as a human rights safeguard; it must be accompanied by effective procedural guarantees, humane detention conditions, meaningful opportunities for sentence review, and objective standards governing conversion or execution.

A comparative perspective further demonstrates that jurisdictions retaining capital punishment employ different mechanisms of clemency, judicial review, and sentence commutation, indicating that the protection of human rights depends substantially on the institutional safeguards surrounding capital sentencing rather than merely on the formal existence of a commutation mechanism ([Rashi & Tanjung, 2026](#)). In this respect, Indonesia's conditional model has distinctive potential because it incorporates the possibility of sentence transformation into the statutory structure of the punishment itself. Nevertheless, the absence of sufficiently detailed standards for assessing conduct and determining the legal consequences of the probationary period may undermine that potential and expose the mechanism to inconsistent or discretionary application. The study therefore finds that the conditional death penalty should be understood as a qualified human-rights safeguard rather than an inherently rights-protective form of punishment. Its contribution to criminal law reform lies in establishing a framework through which the state's power to execute may be subjected to continuing legal and procedural constraints. To realize this potential, future implementation must ensure that the assessment process is objective, institutionally accountable, transparent, and subject to effective review, while the treatment of convicted persons during the

probationary period must fully respect human dignity. Under these conditions, the conditional death penalty may constitute a meaningful stage in the development of a more rights-oriented Indonesian sentencing system; without them, the probationary mechanism risks merely extending the period of uncertainty associated with capital punishment without providing substantive protection for the right to life.

The Conditional Death Penalty as a Compromise Mechanism Between Legal Certainty and Human Rights Protection

The findings of this study indicate that the conditional death penalty under the Indonesian National Criminal Code can be understood as a normative compromise between the state's interest in retaining capital punishment and the obligation to impose stronger safeguards for the right to life, but its effectiveness as a compromise depends on the quality of the legal framework governing its implementation. Law Number 1 of 2023, particularly Articles 98–101 as subsequently amended by Law Number 1 of 2026, does not eliminate capital punishment; instead, it restructures its application by classifying the death penalty as a special punishment and establishing a ten-year probationary mechanism before the sentence may proceed to execution or conversion. This construction distinguishes the Indonesian model from both conventional retentionist systems, in which execution constitutes the definitive consequence of a capital sentence, and abolitionist systems, in which capital punishment has been removed from the sentencing framework. The significance of the Indonesian approach therefore lies in its attempt to transform the death penalty from an immediately executable sanction into a conditional legal status subject to further assessment.

Previous studies have generally characterized this arrangement as a compromise between retributive objectives and humanitarian considerations (Dayati, 2026; Jamilah, 2025). The present study advances this interpretation by demonstrating that the concept of compromise should not be assessed merely according to the existence of a probationary period, but according to whether the mechanism establishes an appropriate distribution of state authority, procedural safeguards, and opportunities for sentence conversion. From the perspective of criminal policy, retaining the death penalty enables the state to preserve its capacity to respond to offenses regarded as exceptionally serious, while the conditional mechanism introduces a legal opportunity to reconsider execution in light of subsequent circumstances. The arrangement therefore incorporates elements of retribution, deterrence, rehabilitation, and proportionality within a single sentencing framework. However, the coexistence of these objectives also creates a structural tension: the stronger the discretion afforded to state institutions in determining whether execution or conversion should follow, the greater the need for objective standards and procedural accountability. The comparative perspective reinforces this conclusion. Abolitionist jurisdictions such as Germany and the Netherlands have removed capital punishment from their criminal justice systems, whereas retentionist jurisdictions employ different mechanisms of clemency, sentence review, or restrictions on execution.

Indonesia's model differs from both approaches because the possibility of conversion is incorporated into the statutory architecture of the death sentence through a defined probationary period. It can therefore be characterized more precisely as a conditional sentencing model rather than simply as a transitional or abolitionist mechanism. This distinction is important because describing the policy as inherently transitional toward abolition would extend beyond what the current statutory framework establishes. Its immediate legal function is instead to regulate the exercise of capital punishment through additional conditions and safeguards. The study consequently finds that the conditional death penalty constitutes a meaningful compromise only when the competing interests it seeks to accommodate are subjected to equivalent legal discipline. The state's interest in punishment cannot justify unrestricted discretion, while the protection of the convicted person's rights cannot be reduced to the mere postponement of execution. The compromise must operate through legally defined procedures that make the outcome of the probationary period predictable, reviewable, and accountable. In this respect, the principal contribution of the conditional death penalty to Indonesian criminal law reform lies not in resolving the philosophical dispute between retentionism and abolitionism, but in creating a legal framework through which the exercise of the state's ultimate penal authority can be subjected to continuing scrutiny. The findings therefore support the development of implementing regulations that clarify the relationship between sentencing, probationary assessment, institutional authority, and sentence

conversion. Such clarification would enable the conditional death penalty to function as a coherent sentencing mechanism rather than as an indeterminate compromise, while providing a more stable foundation for the future development of Indonesian criminal law and sentencing policy.

Implementation Challenges and Law Enforcement Issues Concerning the Conditional Death Penalty in Indonesia

Although the conditional death penalty under the Indonesian National Criminal Code is designed to introduce greater restraint and evaluation into the application of capital punishment, this study finds that its effectiveness remains constrained by significant implementation challenges within the criminal justice system. The principal problem is the potential gap between the normative design of Articles 98–101 of Law Number 1 of 2023, as subsequently amended by Law Number 1 of 2026, and the institutional capacity required to apply those provisions consistently. The conditional mechanism requires decisions concerning the imposition, supervision, evaluation, and possible conversion of a death sentence to be made according to standards that are sufficiently objective and transparent. Where such standards remain underdeveloped, judicial and administrative discretion may generate inconsistent outcomes in cases with comparable factual and legal circumstances. The problem is therefore not discretion per se, because individualized sentencing necessarily requires consideration of the circumstances of the offender and the offense, but the absence of sufficiently structured criteria to constrain and justify that discretion.

This finding reinforces previous research identifying the implementation of the conditional death penalty as one of the principal unresolved aspects of Indonesia's capital punishment reform (Zulhilmil & Chaidar, 2025), while extending that analysis by demonstrating that regulatory uncertainty may produce not only interpretative differences but also disparities in the treatment of convicted persons. A related concern arises from the assessment of concepts such as good conduct, remorse, rehabilitation, and improvement in attitude and behavior. Because these concepts contain substantial evaluative elements, their application requires standardized indicators, reliable evidence, and a transparent assessment procedure; otherwise, decisions may be influenced by subjective moral judgments, institutional preferences, or external public pressure. This risk is particularly significant in high-profile capital cases, where strong demands for severe punishment may affect the institutional environment in which decisions are made. The implementation of the conditional death penalty also requires effective coordination among judicial, prosecutorial, correctional, and other competent state institutions. Fragmented institutional responsibilities may produce delays, overlapping authority, or uncertainty regarding which institution is responsible for particular stages of the probationary process and sentence conversion. Such fragmentation is especially problematic because the legal consequences of the probationary period directly affect the fundamental status of a person sentenced to death.

From a rule-of-law perspective, institutional competence must therefore be established with sufficient precision to ensure accountability and prevent arbitrary exercise of authority. The findings further indicate that oversight constitutes a decisive component of the reform. A conditional death sentence cannot function as a credible safeguard if decisions concerning the convicted person's conduct and the subsequent status of the sentence are not subject to effective review. Transparent documentation, reasons for decisions, institutional supervision, and accessible legal remedies are consequently necessary to ensure that the evaluation process satisfies due-process requirements. Comparative experience with capital punishment systems likewise demonstrates that the existence of statutory safeguards does not necessarily prevent arbitrary application when institutional review mechanisms are weak. The Indonesian model therefore requires more than the formal recognition of a probationary period; it requires an integrated implementation framework linking judicial sentencing, correctional assessment, institutional decision-making, supervision, and legal review. The normative implication of these findings is that the success of the conditional death penalty depends substantially on the development of implementing regulations and institutional procedures that transform broad statutory principles into objective and reviewable standards. Such regulations should establish measurable assessment indicators, clarify institutional responsibilities, regulate inter-agency coordination, require reasoned decisions, and provide effective mechanisms of supervision and review. These measures would reduce sentencing disparities and discretionary inconsistencies while strengthening accountability within the criminal justice system.

Accordingly, the principal contribution of this study is to demonstrate that the conditional death penalty should be evaluated not only as a substantive change in Indonesia's sentencing policy but also as an institutional reform requiring corresponding changes in law-enforcement practice. Without such institutional reinforcement, the conditional death penalty risks remaining a formally progressive provision whose practical operation reproduces the uncertainty, disparity, and discretionary problems that the reform was intended to address. Conversely, if supported by clear standards and accountable institutions, the mechanism has the potential to become a more coherent component of Indonesia's broader transition toward a predictable, individualized, and human-rights-sensitive sentencing system.

Implications for Regulatory and Institutional Strengthening

The findings indicate several normative and regulatory implications for the implementation of the conditional death penalty. Its effectiveness as a mechanism seeking to reconcile legal certainty with human rights protection depends substantially on the quality of the regulatory and institutional framework supporting its operation. First, the adoption of clear and comprehensive implementing regulations is an essential prerequisite for the effective operation of the conditional death penalty. The current provisions of the Indonesian National Criminal Code remain relatively general and leave considerable room for interpretation by law enforcement authorities. Implementing regulations should therefore establish detailed procedures governing the evaluation process during the probationary period, the stages of decision-making, and the allocation of authority among the institutions involved. Such regulatory clarity is essential to prevent disparities in implementation and to ensure the consistent application of the conditional death penalty throughout Indonesia's legal system (Setiodjati & Hamidi, 2025).

Second, the development of objective assessment standards is crucial for safeguarding both legal certainty and human rights. Decisions concerning the eligibility of convicted persons for sentence commutation should not depend solely on the subjective judgment of law enforcement officials. Instead, objective standards should be formulated on the basis of measurable, rational, and legally accountable indicators. From the perspective of criminal law policy, objective assessment criteria function as an important mechanism for limiting administrative and judicial discretion, thereby ensuring that the exercise of state authority remains consistent with the principles of the rule of law (Malau, 2023). Third, an effective and independent oversight mechanism should be incorporated into the implementation of the conditional death penalty. Such oversight serves not only to prevent the abuse of authority but also to ensure that the rights of convicted persons are respected throughout the probationary period. Ideally, this mechanism should involve an independent supervisory body with sufficient credibility to conduct evaluations in an objective, transparent, and accountable manner. Within a constitutional state governed by the rule of law, effective oversight constitutes an essential safeguard to ensure that the most severe criminal sanction remains subject to constitutional principles and internationally recognized human rights standards (Purba et al., 2020).

Fourth, the regulatory framework governing the conditional death penalty should be harmonized with Indonesia's broader human rights protection system. Such harmonization should ensure consistency with the human rights guarantees enshrined in the 1945 Constitution, national human rights legislation, and Indonesia's international human rights commitments. The conditional death penalty should therefore not be viewed solely as an instrument of criminal law enforcement but also as an integral component of the state's broader policy to uphold respect for human dignity (Putri et al., 2024). Through such harmonization, the conditional death penalty may function as a transitional mechanism that supports the ongoing reform of Indonesia's criminal justice system toward a more humane and rights-oriented model of punishment (Pinandito & Putratama, 2025). Conceptually, these recommendations emphasize that the effectiveness of the conditional death penalty depends not on the severity of the punishment itself but on the quality of its legal regulation and the consistency of its implementation (Islamy et al., 2026). The conditional death penalty should be positioned as a criminal law policy instrument that is responsive to the continuing development of international human rights standards while simultaneously preserving legal certainty and maintaining public confidence in the administration of justice (Suprawan & Prayuti, 2025). Strengthening the regulatory framework governing the conditional death penalty is therefore a

strategic step toward ensuring that the reform introduced by the Indonesian National Criminal Code extends beyond legislative amendment and produces a substantive transformation of Indonesia's criminal justice system.

LIMITATION

This study is limited to a normative analysis of the statutory and doctrinal framework governing the conditional death penalty. It does not examine the empirical operation of probationary assessments, institutional coordination, or sentence-conversion decisions in practice. Comparative references are used to provide normative context rather than to constitute a systematic comparative-law analysis. Future empirical research is therefore needed to examine how the conditional mechanism operates within Indonesia's criminal justice institutions.

CONCLUSION

The conditional death penalty under Indonesia's National Criminal Code represents a distinctive reconstruction of capital punishment by retaining the death penalty while subjecting its execution to a probationary mechanism and the possibility of sentence conversion. The study finds that this framework can be understood as an intermediate normative model between conventional retention and abolition, rather than merely as a postponement of execution. Its normative significance lies in creating a legal mechanism through which the continuation of a death sentence may be reconsidered while the state retains capital punishment within the sentencing system.

From the perspective of legal certainty, the principal challenge lies in the operationalization of the conditional mechanism. Although subsequent legislative developments have clarified several aspects of probation and sentence conversion, greater regulatory precision remains necessary regarding objective assessment criteria, evidentiary standards, institutional responsibilities, procedural coordination, and mechanisms of review. From a human rights perspective, the possibility of sentence conversion may provide an additional safeguard for the right to life and human dignity, but postponement of execution alone is insufficient to ensure substantive protection. The legitimacy of the mechanism therefore depends on transparent, accountable, and reviewable procedures capable of limiting arbitrary decision-making.

Accordingly, the conditional death penalty can function as a meaningful normative compromise between the continued retention of capital punishment and stronger human rights protection only when supported by clear legal standards, accountable institutional arrangements, and effective procedural safeguards. The study therefore demonstrates that the effectiveness of the conditional death penalty depends not merely on the existence of a probationary period or sentence commutation, but on the interaction between legal certainty, human rights protection, institutional accountability, and procedural fairness.

AUTHOR CONTRIBUTIONS

SF contributed to the conceptualization of the study, formulation of the research questions, development of the normative legal framework, and selection of the statutory, conceptual, and human rights approaches. EL contributed to the development of the research methodology, examination and interpretation of relevant legislation and international human rights instruments, and analysis of the legal implications of the conditional death penalty. F contributed to the analysis of criminal law doctrines, assessment of legal certainty and human rights considerations, and interpretation of the findings concerning the commutation mechanism, probationary period, and distribution of institutional authority. SF, EL, and F jointly contributed to the synthesis of the findings, development of the discussion and conclusions, and formulation of recommendations concerning implementing regulations, objective evaluation criteria, institutional authority, and transparent sentence-commutation procedures. All authors contributed to the critical review and revision of the manuscript, approved the final version, and agreed to be accountable for all aspects of the work.

DECLARATION OF GENERATIVE AI AND AI-ASSISTED TECHNOLOGIES IN THE WRITING PROCESS

During the preparation of this manuscript, the authors used generative artificial intelligence (AI) and AI-assisted technologies solely to assist with language-related tasks, including grammar checking, language refinement, sentence restructuring, and improving the clarity and readability of the academic text. AI tools were not used to generate legal arguments, interpret legislation, conduct the normative legal analysis, determine the findings, or formulate the substantive conclusions of the study. All AI-assisted outputs were critically reviewed, verified, and revised by the authors to ensure their accuracy, consistency with the cited legal sources, and compliance with academic and publication standards. The authors retain full responsibility for the content of the manuscript, including the research methodology, interpretation of legislation and human rights instruments, legal analysis, findings, conclusions, and recommendations. The final manuscript reflects the authors' own scholarly judgment and responsibility.

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